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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

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JOHN S. BARNES CORPORATION,
*Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

Petitioner, John S. Barnes Corporation, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit enforcing an order of the National Labor Relations Board.

## OPINIONS BELOW

The court of appeals issued no opinion. Its order enforcing the Board's order is set forth in the Appendix to this petition at App. 1a. The Board's Decision and Order are reported at 180 NLRB No. 139, and are reproduced in the Appendix at App. 9a.

## JURISDICTION

The judgment of the court of appeals, which is reproduced in the Appendix hereto at App. 2a-8a, was en-

tered on April 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

The principal question presented is whether the court below properly held that an employer, formally charged with having committed unfair labor practices within the meaning of the National Labor Relations Act, committed a further unfair labor practice when its counsel, in advance of a scheduled NLRB hearing, interviewed certain of its employees in order to prepare the employer's defense to the charged unfair labor practices.[1]

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

### RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in

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[1] In addition, the following subsidiary question is presented:

Whether the court below erred in affirming the Board's findings that Petitioner violated Section 8(a)(3) of the National Labor Relations Act by discharging two employees, John L. Brown and Peter Roskopp, and by changing the working hours of two other employees, Sam LaSala and Clyde Edwards.

Should Petitioner's position be accepted with respect to the principal question, the Court may also deem it appropriate to review the subsidiary question. In order to preserve Petitioner's position with respect to the latter issue, it is specifically adverted to herein.

a labor organization as a condition of employment as authorized in section 8(a)(3).

## UNFAIR LABOR PRACTICES

SEC. 8(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

* * * *

(5) to refuse to bargain collectively with the representatives of his employees . . .

* * * *

## STATEMENT OF THE CASE

The General Counsel of the National Labor Relations Board issued a complaint against the Company, Petitioner herein, charging that the Company had committed unfair labor practices within the meaning of Sections 8(a)(1), 8(a)(3), and 8(a)(5) of the National Labor Relations Act. The complaint charged, *inter alia*, that the Company had unlawfully refused to bargain with Lodge No. 1553, International Association of Machinists, AFL-CIO ("the Union"); had discriminatorily discharged employees John L. Brown and Peter Roskopp, and had discriminatorily increased the hours of work of employees Sam LaSala and Clyde Edwards; and had threatened and unlawfully interrogated its employees, and engaged in surveillance of their union activities.

The refusal to bargain allegation in the complaint against the Company grew out of a demand for recognition by the Union, which the Company had refused. This

allegation placed in issue the Union's asserted majority status—an issue which, in turn, presented the question of whether a majority of the Company's employees had signed authorization cards designating the Union as their bargaining representative.

A hearing on the complaint against the Company was held before a Trial Examiner. In preparation for the hearing, the Company's attorneys interviewed a number of Company employees with respect to matters and issues raised by the complaint, particularly the question of whether they had signed union authorization cards.

The Board found that the Company violated Sections 8(a)(3) of the Act by discriminating against employees Brown, Roskopp, LaSala, and Edwards. It further found that the Company violated Section 8(a)(1) of the Act by, among other acts, its interviewing of employees in preparation for the unfair labor practice hearing.

The Board also found that the proof failed to establish that the Union was a duly designated bargaining agent of the Company's employees in an appropriate unit at the time the Union demanded recognition. Accordingly, the Board dismissed the complaint allegation that the Company had refused to bargain with the Union in violation of Section 8(a)(5).[2]

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[2] The Section 8(a)(5) allegation against the Company grew out of a demand for recognition which the Union made in June, 1965, and which the Company refused. Previously, in August, 1964, in a representation proceeding, the Union had lost a Board-conducted election among the Company's employees. Objections by the Union to the 1964 election had not been resolved when the Union made its 1965 recognition demand. The unfair labor practices proceeding below was consolidated with the unfinished representation proceeding, and the issues involved in both proceedings were tried together before the Board.

In the Decision and Order brought before the Court by this petition, the Board directed that a second election be held. The Union won the second election, and, on June 30, 1971, was certified by the Board as the bargaining representative of the Company's employees.

The court of appeals, without opinion, enforced the Board's findings against the Company. The jurisdiction of the court of appeals was predicated on Sections 10(e) and 10(f) of the National Labor Relations Act, as amended.

## A. The Facts

### 1. *The Prehearing Interrogation of Employees*

The hearing before the Trial Examiner on the complaint against the Company began on November 3, 1965. On the day before, the Company called four employees to Plant Manager Stenberg's office. Each of the called employees had been subpoenaed by the NLRB General Counsel to testify at the hearing, and, pursuant to the General Counsel's instructions, had so informed the Company.

Present at the time, in addition to Stenberg, were attorneys Fahy and Holmstrom who were the Company's counsel at the hearing before the Trial Examiner. Stenberg introduced the employees, and told them that the attorneys wished to ask them a few questions. The four employees were told by the attorneys that the Company was attempting to find out what the "problem" was. One of the four employees, Sam LaSala, testified that he was advised at the outset by attorney Fahy that if he did not so choose, he did not have to answer the questions. With LaSala's consent, Fahy asked LaSala whether he had signed a union authorization card, and whether he had been threatened or promised benefits either to join or not to join the Union. LaSala replied in the negative. LaSala was also asked whether he believed the Company had engaged in the surveillance of a Union meeting, and, when he responded affirmatively, he was asked to name the persons who had done so. LaSala named Stenberg and a female companion—a reply which prompted considerable laughing and joking. Attorney Holmstrom then asked LaSala whether any reason existed for a change the Company had made in LaSala's work hours, and whether he

had been informed of the Company's reason. LaSala replied that he had not been given a reason.

Employees Madeline Stone and Betty Holton were asked by attorneys Fahy and Holmstrom whether, and under what circumstances, they had signed union authorization cards. Holton, who acknowledged signing a card, was asked the date she had done so. Holton also acknowledged that there were no "unpleasantries" during the interrogation. Employee Thomas Kruse was asked whether he had been interviewed by the Board, and the nature of the questions asked. Kruse testified about the interview: "I told them—there were questions about who my foreman was and about the inside of the shop, the general run of the shop and who it was under—it was jokingly. There was no pressure put on me at all."

### 2. *The Discharge of John L. Brown*

Employee John L. Brown was discharged on March 9, 1965, for violating a published Company rule prohibiting employees from leaving their work places during working hours. The rule had been operative since April 1, 1964. In January 1965, the Company republished the rule in the following form:

> *The Company rule remains:* Every employee is prohibited from leaving his place of work (except in the line of duty or with permission of his foreman) during working hours,—or from distracting or interfering with the work of another during working hours. The rule is *not* changed.

On the afternoon of the day preceeding Brown's discharge, Plant Manager Stenberg was on the manufacturing floor when he observed Brown, who was outside his department, talking for an extended period of time with two maintenance men. Brown was then 80-100 feet away from his work place.

The next morning Stenberg had foreman Burchett bring Brown to the office. Sternberg showed Brown the Com-

pany's "work station" rule, and Brown acknowledged his familiarity with it. Stenberg told Brown that he had seen him away from his place of work on the previous afternoon, and that he, Stenberg, knew of no justification for the matter. Brown, in turn, offered no explanation. Stenberg then told Brown that this was the "final straw" that the matter had been discussed with the Company's president, Svenson, and that it had been decided to terminate Brown. Brown was quiet, and asked only, "Am I fired?" Brown himself admitted that he offered no explanation for being away from his work station, testifying, "I didn't say nothing."

Prior to his discharge, Brown had been reprimanded a number of times, and had been warned that he might be discharged. The reprimands were delivered on March 20 and December 13, 1964, and on January 25 and February 25, 1965. On the latter date, Plant Manager Stenberg told Brown that "his place of work was the stock room and he was to refrain from leaving the stock room and going to any other part of the plant and from engaging employees in conversation"; that this was his "last warning"; and that the next time he was called into the office he "would be terminated."

Five employees other than Brown had been reprimanded for being away from their work stations. Four of the latter 5 employees were also warned that they would be discharged for a repetition of their conduct. In fact, the Company had discharged employees other than Brown for violating Company rules.

### 3. *The Discharge of Peter Roskopp*

On Monday, May 24, 1965, Plant Manager Stenberg and Supervisor Eric Johnson, were conversing on the production floor. Employee Roskopp "butted in," and announced that he was starting his vacation on Thursday. Stenberg reminded Roskopp that vacations were not started in the middle of the week, that they were ap-

proaching the end of the month with a holiday to be observed on the following Monday, and that every available person was needed to complete work on the month's shipments. Roskopp replied that he had previously been granted permission by Johnson to leave on Thursday, that he "had already made his plans," and that "he was going to go Thursday." Stenberg, however, told Roskopp to "wait until Saturday, go on Saturday, and then you can get the weekend and the holiday and go the next week."

When Stenberg remained adamant in his position, Roskopp became very loud, using "some pretty vulgar and vile language." He said, "You —— ——, you will be in court over this. I will take this to the N.L.R.B., you dumb son-of-a-bitch." Stenberg then told Rosskopp that they would discuss the matter further the next morning, and walked away. Roskopp's statements were overheard by other employees who were in the area.

The next morning, Stenberg told Roskopp that he was suspended for the day, pending a decision as to what action would be taken against him. Later that day Stenberg met with Svenson, the Company's president, and related the exact remarks that Roskopp had uttered the day before. Roskopp's employment record was reviewed. Svenson agreed that Roskopp should be discharged. Svenson also suggested that Stenberg write up the details of the matter in a memorandum, and that the memorandum should be handwritten so that the secretaries would not be embarrassed by the language Roskopp had used. Accordingly, Stenberg prepared such a memorandum that night at his home.

On Wednesday, May 26, Stenberg brought Roskopp to his office, told him of the decision that had been made, and discharged him.

Roskopp admitted that he got "angry" and was "mad" when Stenberg told him that he couldn't leave on Thursday. He also admitted that he had "cursed" Stenberg

and had used profanity, asserting, however, that Stenberg had also cursed him. But Roskopp could not "remember" what he had said or who had cursed first.

#### 4. *The Increase In the Work Hours of Employees LaSala and Edwards*

During the first four months of 1965, the Company's business increased substantially. As a result, an hour was added to the shift of the night employees, so that they were working 11½ hours each shift. At the same time, all day shift employees, except a few females and employees Sam LaSala and Clyde Edwards, were working from 7:00 A.M. until 5:00 P.M. on weekdays, and from 7:00 A.M. until noon on Saturdays, for a total normal work week of 52½ hours. LaSala and Edwards, however, had been leaving work at 4:30 P.M. each weekday, and thus were working 2½ hours less per week than the other male day shift employees.

On March 9, 1965, Stenberg told LaSala and Edwards that they would have to work the same hours as everyone else—that is from 7:00 A.M. to 5:00 P.M. on weekdays. Stenberg testified that the change was effected because it was "wrong" that LaSala and Edwards had not been working the same number of hours during the "standard work week" as the Company's other male employees.

### B. The Board's Decision and Order

In explanation of its conclusion that the prehearing interviewing of employees by the Company's attorneys violated Section 8(a)(1) of the Act, the Board, noting only that Plant Manager Stenberg was present and "participated," stated that the interrogation by counsel "went far beyond anything permissible for the legitimate preparation of their case." No other rationale was set forth. (App. 14a; 35a-37a). The Board's conclusion that the Company violated Section 8(a)(3) of the Act by its actions with respect to employees Brown, Roskopp, LaSala and Edwards was predicated on findings that the Com-

pany was motivated in its actions by antiunion considerations.

The Board's order, *inter alia*, required the Company to cease and desist from the unfair labor practices found, and to offer reinstatement to Brown and Roskopp with backpay for loss of earnings.

### C. The Order and Judgment of the Court of Appeals

As stated, the court of appeals enforced the Board's order without opinion. The judgment of the court of appeals enlarged the Board's order by requiring the Company to reduce the work hours of employees LaSala and Edwards, if they consented.

## REASONS FOR GRANTING WRIT

1. The issues raised by this certiorari petition—whether, and under what circumstances, an employer may, through attorneys, interview and interrogate it employees in order to prepare a defense to charged unfair labor practices—is extremely important in the interpretation and administration of the National Labor Relations Act. These are matters of vital significance to employers who may be charged with the commission of unfair labor practices;[3] to employees whose rights under the Act may be affected by employer action; to labor organizations with interests frequently aligned with employee interests; and to the Board itself which frequently must achieve a "delicate balance" between the employer's need to prepare adequately for pending unfair labor practice cases and the possible coercive nature of employer interrogation of employees during a labor dispute. See *International Union, United Automobile, Aerospace and Agricultural Imple-*

[3] The Board's most recently issued annual report shows that during the fiscal year ending on June 30, 1969, charges were filed against employers in 12,002 NLRB cases, and formal complaints against employers were issued in 1,492 NLRB cases. *Thirty-fourth Annual Report of the National Labor Relations Board*, pp. 199-200.

*ment Workers of America* v. *N.L.R.B.*, 392 F.2d 801, 809 (D.C. Cir. 1967), *cert. denied*, 392 U.S. 906 (1968).

2. The decision of the court below appears to be predicated on reasoning in conflict with the reasoning set forth by the Court of Appeals for the Fifth Circuit in its decision in *N.L.R.B.* v. *Ambox, Incorporated*, 357 F.2d 138, 141 (5th Cir. 1966). Because the court below issued no opinion, the rationale of its decision is obscured. The court, however, affirmed the Board's finding that the prehearing interrogation by Company counsel "went far beyond anything permissible for the legitimate preparation of their case," and thus the court necessarily gave its approval to the Board's rationale.

Although the Board permits an employer to interrogate employees in order to investigate facts concerning issues raised in a complaint and to prepare its case for trial, the privilege has been carefully circumscribed by the Board with so-called "safeguards." The Board thus set forth the limitations on the privilege in *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964):

> . . . an employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege.

The District of Columbia Circuit, the court below, has expressly approved the standard established by the Board in the *Johnnie's Poultry* case. In *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America* v. *N.L.R.B.*, *supra*, 392 F.2d

at 809 (D.C. Cir. 1967), that court quoted with approval the language set forth above from *Johnnie's Poultry* with respect to "safeguards," and concluded that "in this case some of these safeguards were conspicuously absent." Similarly, in *Amalgamated Clothing Workers of America* v. *N.L.R.B.*, 424 F.2d 818, 825 (D.C. Cir. 1970), the court again quoted the "safeguards" language of *Johnnie's Poultry*, and held that the Board did not unreasonably conclude "that in the absence of 'specific safeguards' [an employer] questionnaire was inherently coercive."

It thus appears that the court below, like the Board, has privileged prehearing employer interrogation of employees only under limited circumstances, and only if the "safeguards" test of *Johnnie's Poultry* has been satisfied. The standard of the court below appears, moreover, to assume that employer interrogation of employees is, of itself, coercive, but that fairness to the employer requires that a limited amount of such questioning be permitted. See *Joy Silk Mills* v. *N.L.R.B.*, 185 F.2d 732, 743 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 914 (1951).

By contrast, the Fifth Circuit applies a more lenient standard—one that does not embrace the "safeguards" tests of *Johnnie's Poultry*. Thus in *N.L.R.B.* v. *Ambox, Incorporated*, 357 F.2d 138, 141 (5th Cir. 1966)—which was decided some two years after *Johnnie's Poultry*—the focus of the court's inquiry was limited to the narrow question of whether the interrogation had gone beyond the issues raised by the unfair labor practice complaint. The court said (357 F.2d at 138):

> There is no doubt that where an employer has a legitimate cause to inquire, he may exercise the privilege of interrogating employees on matters involving their Section 7 rights without incurring Section 8(a)(1) liability. Did the interrogation here go beyond that legitimately necessary for the preparation of respondent's defense? We think not. The inquiry did not delve into union matters *beyond* the limits of the issues raised by the complaint.

*Accord: Texas Industries Inc.* v. *N.L.R.B.*, 336 F.2d 128, 133-134 (5th Cir. 1964); *N.L.R.B.* v. *Guild Industries Manufacturing Corp.*, 321 F.2d 108, 112-113 (5th Cir. 1963). See also *N.L.R.B.* v. *National Survey Service, Inc.*, 361 F.2d 199, 206-207 (7th Cir. 1966).[4] The standard of the Fifth Circuit, moreover, unlike that of the District of Columbia Circuit appears, to be predicated on the view that employer interrogation of employees is not *per se* coercive. See *Bourne* v. *N.L.R.B.*, 332 F.2d 47, 48 (2nd Cir. 1964); *N.L.R.B.* v. *Lorben Corp.*, 345 F.2d 346, 348 (2nd Cir. 1965); *N.L.R.B.* v. *Gladding Keystone Corp.*, 435 F.2d 129, 132 (2nd Cir. 1970).

In sum, a conflict exists between the District of Columbia and Fifth Circuits with respect to the standard to be applied in adjudicating cases involving prehearing interrogation of employees by employers. It is submitted that this Court should, in this case, resolve the conflict in view of the importance and recurrent nature of the problem thus presented.

3. Even under the stringent standard established by the Board in the *Johnnie's Poultry* case, *supra*, as applied by the court below in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America* v. *N.L.R.B.*, *supra*, and in *Amalgamated Clothing Workers of America* v. *N.L.R.B.*, *supra*, the prehearing interviewing of employees by the Company's attorneys was clearly privileged.

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[4] It is arguable that the Eighth Circuit has also rejected the "safeguards" standard of the Board's *Johnnie's Poultry* decision. Refusing to enforce the Board's finding of a violation in the latter case, the court, in *N.L.R.B.* v. *Johnnie's Poultry Co.*, 344 F.2d 617, 619 (8th Cir. 1965), said: "With respect to the interviewing of employees, we have examined the record, the Examiner's report and the Board's decision, and without detailed discussion, we state that we are of the view that the Board's determination on this issue is not supported by substantial evidence. The facts are adequately set out in the Examiner's report which resulted in his conclusion, reading: 'On all the evidence I find the interviews were confined to matters well within the scope of the amended charge and the complaint and were neither illegal nor coercive.'"

The questions addressed to the employees by the Company's attorneys were confined to matters well within the scope of the complaint against the Company. Thus the Section 8(a)(5) allegation of the complaint placed in issue the Union's status as majority representative, which, in turn, raised issues with respect to the authorization cards upon which the Union's majority status depended. Questions pertaining to employee signatures on authorization cards, as well as the circumstances surrounding the signing of the cards, were therefore clearly relevant to issues raised by the complaint. Consequently, in preparing for the hearing, the Company's attorneys were privileged to interview employees about these matters. *Joy Silk Mills* v. *N.L.R.B.*, *supra; N.L.R.B.* v. *Johnnie's Poultry Co.*, 344 F. 2d 617, 618-619 (8th Cir. 1965); *Madison Brass Works, Inc.*, 161 NLRB 1206, 1211 (1966); *Kintner Bros. Inc.*, 167 NLRB 57, 64 (1967).

Similarly, the questions asked employee LaSala about the change in his working hours and the matter of Company surveillance of a Union meeting pertained to Section 8(a)(3) and 8(a)(1) issues raised by the complaint. The interviewing was therefore privileged. *Atlantic and Pacific Tea Company*, 138 NLRB 325, 334 (1962); *S. S. Logan Packing Company*, 152 NLRB 421, 423, 425-426 (1965); *Montgomery Ward & Co., Inc.*, 146 NLRB 76, 79-80 (1964); *May Department Stores Co.*, 70 NLRB 94, 95 (1946).

The interviewing of employee Kruse concerning his prehearing questioning by the Board was likewise privileged. Although Kruse was asked by the Company's attorneys whether he had been questioned by the Board and what the Board attorney had questioned him about, Kruse was *not* asked how he had answered, what he had said, or to reveal the contents of any statement he had given to the Board. Accordingly, the interviewing of Kruse did not violate the Act. *Texas Industries Inc.* v. *N.L.R.B.*, *supra*, 336 F.2d at 134; *Montgomery Ward & Co., Inc.*,

146 NLRB 76, 79-80 (1964); *Lipman Bros. Inc.*, 147 NLRB 1342, 1368-1369 (1964); *Murray Ohio Manufacturing Company*, 156 NLRB 840, 848, n. 28 (1966); *Bishop and Malco, Inc., d/b/a Walker's*, 159 NLRB 1159, 1161 (1966).

That the employees who were thus interviewed had also been subpoened by the Board to testify in the approaching unfair labor practice hearing, is not material. See *Huttig Sash & Door Company, Inc.*, 154 NLRB 1567 (1965); *Madison Brass Works, Inc.*, 161 NLRB 1206, 1211 (1966); *Kintner Bros. Inc.*, 167 NLRB 57, 64 (1967). See also *Imco Container Company*, hearing. Moreover, as required by the rule of *Johnnie's Poultry, supra*, the interviews of the Company's employees were voluntary and were conducted in an atmosphere free from employee hostility. Thus the employees were told that they did not have to answer any questions put to them, the employees were not "pressured", and there was "laughing and joking" during the interviews, and no "unpleasantries".

Nor does the single reason assigned by the Board to support its finding of a violation—that Plant Manager Stenberg was also present at these conferences with employees and participated in the questioning—carry weight. Factually, Stenberg's participation in the interviewing was confined to introducing the employees to the Company's attorneys, and to informing the employees that the attorneys would like to ask a few questions. Moreover, the rule priviliging interviewing to prepare for trial is not limited to interviewing by an employer's counsel; it extends to the employer generally. *Joy Silk Mills* v. *N.L.R.B., supra; Suprenant Manufacturing Co.* v. *N.L.R.B.*, 341 F. 2d 756, 762 (6th Cir. 1965). Thus, as originally promulgated by the Board, the rule extended to an employer and, derivatively, to the employer's counsel. *May Department Stores*, 70 NLRB 94, 95 (1946). The rule has since in fact been applied by the Board to privilege questioning by employer representatives who

were not attorneys. *Murray Ohio Manufacturing Company*, 156 NLRB 840, 847-848, n. 28 (1966). And the Board has in fact applied the rule to privilege interviewing by an attorney in the presence of high managerial officials (employer's store manager and district manager) who were not attorneys. *Montgomery Ward & Co., Inc.*, 146 NLRB 76, 79-80 (1964).

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: July 1971

## APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1970

[no opinion].

No. 24,021

[United States Court of Appeals for the District of Columbia Circuit, Filed March 11, 1971, Nathan J. Paulson, Clerk]

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

JOHN S. BARNES CORPORATION, RESPONDENT

Application for Enforcement of Order of the National Labor Relations Board.

BEFORE: Bazelon, Chief Judge, and Tamm and Wilkey, Circuit Judges.

### ORDER

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

On consideration of the foregoing, it is ordered and adjudged by this Court that the order of the National Labor Relations Board on review herein is hereby enforced. The National Labor Relations Board shall file within 14 days from the date of this order a proposed judgment in accordance with this order, pursuant to Rule 19 of the Federal Rules of Appellate Procedure.

*Per Curiam:*

# UNITED STATES COURT OF APPEALS
# FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,021

[United States Court of Appeals for the District of Columbia Circuit, Filed April 19, 1971, Nathan J. Paulson, Clerk]

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

JOHN S. BARNES CORPORATION, RESPONDENT

## JUDGMENT

BEFORE: Bazelon, Chief Judge, and Tamm and Wilkey, Circuit Judges.

THIS CAUSE came on to be heard upon an application for enforcement of an order of the National Labor Relations Board dated January 23, 1970, against John S. Barnes Corporation, its officers, agents, successors and assigns. The Court heard argument or respective counsel on March 1, 1971, and having considered the briefs and transcript of record filed in this cause, entered an order on March 11, 1971, granting enforcement of the Board's said order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that John S. Barnes Corporation, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union membership, activities and desires.

(b) Promising or granting employees wage increases and other benefits or improvements in their terms or conditions of employment on condition that they refrain from becoming members of Lodge No. 1553, International Association of Machinists, AFL-CIO, or any other union.

(c) Keeping under surveillance the meeting places, meetings, and union or other activities of employees.

(d) Creating the impression that they are keeping under surveillance the activities of Lodge No. 1553, International Association of Machinists, AFL-CIO, or the concerted activities of employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

(e) Restricting the movement of employees, or refusing to grant employees transfers, wage increases, and other benefits or improvements in their terms and conditions of employment because they engage in union or other protected or concerted activities.

(f) Threatening employees with loss of employment or other reprisals if they give any assistance to Lodge No. 1553, International Association of Machinists, AFL-CIO, or engage in other concerted activities.

(g) Promulgating and maintaining any plant rules prohibiting employees from supporting and soliciting for Lodge No. 1553, International Association of Machinists, AFL-CIO, only.

(h) Telling or advising employees that they should not cooperate with the Board or its agents.

(i) Discouraging membership in the above-named Union or any other labor organization by discriminatorily discharging employees, or in any other manner discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act.

(j) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named Union or other labor organizations, to bargain collectively to representatives of their own choosing, and to engage in any other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by any agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, to Peter Roskopp and John Brown and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them by payment to each of them of a sum of money equal to what he would normally have earned as wages but for the discrimination against him less his net interim earnings, *Crossett Lumber Company*, 8 NLRB 440, 497-8, said backpay to be computed on a quarterly basis in the manner established in *F. W. Woolworth Co., supra*, 90 NLRB 289.

(b) Reduce the work hours of LaSala and Edwards, if those employees are willing, to the level that they had been before they were discriminatorily increased by Respondent.

(c) Preserve, upon request, make available to the Board and its agents, for examination and copying all payroll records, social security payment records, timecards, personnal records and reports, and all other records necessary or useful in determining the amount of backpay due under the terms of this Judgment.

(d) Post at its plant in Rockford in the Odin Industrial Plaza, Rockford, Illinois, copies of the notice attached hereto and marked "Appendix." Copies of said notice to be furnished by the Regional Director for the Thirteenth Region, (Chicago, Illinois), shall, after being duly signed by the Respondent's representatives be posted by Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places were notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the said Regional Director in writing, within 10 days from the date of this Judgment, what steps Respondent has taken to comply herewith.

/s/ [Illegible]
Chief Judge, United States
Court of Appeals for the
District of Columbia
Circuit

/s/ Edward Allan Tamm
Circuit Judge, United States
Court of Appeals for the
District of Columbia
Circuit

/s/ Malcolm Richard Wilkey
Circuit Judge, United States
Court of Appeals for the
District of Columbia
Circuit

# APPENDIX

## NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Judgment of the United States Court of Appeals Enforcing an Order of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT
(As Amended)

we hereby notify our employees that:

WE WILL NOT discourage membership in LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or in any other labor organization, by discharging employees or discriminating against them in any other manner in regard to their hire or tenure of employment of any term or condition of employment except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

WE WILL NOT interrogate our employees concerning their union membership, activities and desires.

WE WILL NOT promise or grant to our employees wage increases and other benefits or improvements in their terms or conditions of employment on condition that they refrain from supporting or becoming members of LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any other union.

WE WILL NOT keep under surveillance the meeting places, meetings, and union or other concerted activities of our employees.

WE WILL NOT create the impression that we are keeping under surveillance the activities of LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or the concerted activities of our employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT restrict the movement of our employees, or refuse to grant our employees wage increases, and other benefits or improvements in their terms and conditions of employment because they engage in union or other protected or concerted activities.

WE WILL NOT threaten our employees with loss of employment or other reprisals if they give any assistance of LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or engage in other concerted activities.

WE WILL NOT promulgate and maintain any plant rules prohibiting our employees from supporting and soliciting for LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, only.

WE WILL NOT tell or advise our employees that they should not cooperate with the National Labor Relations Board or its agents.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed to them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL cut back the hours of Sam LaSala and Clyde Edwards, if they so desire, to the hours they were working before they were discriminatorily changed by us.

WE WILL offer John Brown and Peter Roskopp immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of the discrimination against them, as provided in "The Remedy" section of the Trial Examiner's Decision.

All our employees are free to become, remain or refrain from becoming or remaining, members of the above-named union, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

JOHN S. BARNES CORPORATION
(Employer)

Dated ..... By .....
(Representative) (Title)

NOTE: We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 881 U.S. Courthouse & Federal Office Building, 219 S. Dearborn St., Chicago, Illinois 60604 (Tel. No. 353-7597).

For Release Morning Papers Jan. 28, 1970

180 NLRB No. 139

D-619
Rockford, Ill.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases 13-CA-6407, 13-CA-6637, 13-CA-7049

JOHN S. BARNES CORPORATION

and

LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

Case 13-CA-7027

JOHN S. BARNES CORPORATION

and

JOHN L. BROWN, An Individual

Case 13-RC-10159

JOHN S. BARNES CORPORATION, EMPLOYER

and

LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

## DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On August 26, 1966, Trial Examiner Eugene E. Dixon issued his Decision in the above-entitled consolidated proceeding, finding that the Respondent had engaged in and

was engaging in certain unfair labor practices alleged in the complaint and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also recommended that the petition in Case 13-RC-10159 be dismissed and all proceedings in that case be vacated. The Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The General Counsel and the Charging Party filed cross-exceptions to the Trial Examiner's Decision and briefs in support of such cross-exceptions. Respondent then filed a brief in answer to the cross-exceptions of the General Counsel and the Charging Party,[1] and the General Counsel filed an answering brief.

On January 9, 1967, the National Labor Relations Board, having duly considered the Respondent's exceptions, ordered that the record in these proceedings be reopened and that a further hearing be held before the Trial Examiner for the purpose of adducing further evidence bearing on the question of the authenticity of the signatures appearing on the union authorization cards which were used to establish the Charging Party's majority status. The Board also ordered that, upon the conclusion of such further hearing, the Trial Examiner prepare a Supplemental Decision containing findings of fact as to the authenticity of the union authorization cards, conclusions of law, and recommendations.

Pursuant to the above order, the Trial Examiner held a supplemental hearing and on August 28, 1967, issued his Supplemental Decision reaffirming his finding in his initial Decision that a majority of Respondent's employees

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[1] The Charging Party also filed a motion to consolidate these cases with Case 13-CA-7372, in which a Trial Examiner's Decision issued November 18, 1966. It is appeared that the charges alleged in Case 13-CA-7372 could properly be litigated separately, we denied the motion to consolidate. See *John S. Barnes Corporation*, 165 NLRB No. 58, footnote 2.

in an appropriate unit had signed cards authorizing the Charging Party to represent them for the purposes of collective bargaining, and his recommendations, as set forth in his initial Decision, that Respondent be ordered to bargain with the Charging Party, as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a brief in support thereof, and the General Counsel filed cross-exceptions to the Trial Examiner's Supplemental Decision and a brief in support of the cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the initial and supplemental hearings and finds that no prejudicial error was committed.[2] The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and Supplemental Decision, the exceptions, cross-exceptions, and briefs, and the entire record in these cases, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations only to the extent consistent herewith.

*(A) The 8(a)(1) Conduct*

We agree with the Trial Examiner's conclusions that Respondent, on numerous specified occasions, violated Section 8(a)(1) of the Act. However, the Trial Examiner

[2] The General Counsel excepted to the ruling of the Trial Examiner, in his Supplemental Decision at footnote 17, reversing his rejection of testimony offered as to what the signers of cards believed to be the purpose of the cards, and considering this testimony together with other evidence. In view of our ultimate conclusion, we do not consider the Trial Examiner's action prejudicial error. We nevertheless emphasize our reluctance to consider testimony regarding the subjective intent of the card signers. Cf. *N.L.R.B.* v. *Gissel Packing Company*, 395 U.S. 575 at 608, 1969.

inadvertently failed to find specifically that certain conduct of the Respondent, which he described as constituting interference, restraint, and coercion, violated Section 8 (a) (1) of the Act. We find that the conduct so described by the Trial Examiner violates Section 8(a) (1) of the Act. In order to further clarify his Decison, we find the following incidents set out in his Decision, but not specifically found to violate the Act, constitute interference, restraint, and coercion in violation of Section 8(a) (1).

(1) *Interrogation*: Respondent's president Svenson's questioning of employee Straley on April 1, 1964, regarding his solicitation of authorization cards and whether he was attending a union meeting that night; supervisor Johnson's separate questioning on April 2 of employees Winters about attending the above meeting and then denying him a raise after he admitted his attendance and Livingston, asking him how the Union got started and if he knew any of the other employees involved in the "union deal"; Johnson's questioning of Strickland about 2 weeks later as to his feelings toward the Union; Johnson's interrogation of Livingston on April 24 in regard to attendance and events at the union meeting the night before, and Johnson's questioning of employee Seaton shortly after the same meeting about his attendance; employee Carlisle's being asked by Superintendent Stenberg shortly before another meeting set for May 1, how he felt about the Union and whether he was going to the meeting, and again on May 2, in Stenberg's office, about the Union and who had been at the meeting the night before; Stenberg's conversation in his office in May 1964 with employee Sarver concerning Sarver's attendance at union meetings and what the "problem" was; Stenberg's questioning of Winters on July 8 about being "one of the fellows behind this union trouble"; Svenson's conversation with employee Holder in late July about the Union's buying him a car; Stenberg's questioning employee Strick-

land in late 1964 about who was passing out cards; and Stenberg's calling employee Huckabee to his office on March 9, 1965, and expressing surprise at Huckabee's continued union activities.

(2) *Telling or implying to employees that their union activities were under surveillance*: Svenson's statement to employee Straley on April 1, 1964 that he heard Straley was soliciting cards; Stenberg's reading the names of employees who had attended a union meeting to employee Carlisle on May 2, 1964; Stenberg's and Svenson's accusing Winters of being one of the fellows behind this union trouble on July 7, 1964; Stenberg's reply to Huckabee on March 17, 1965, that employees keep going to the union hall, implying he knew Huckabee went to the union hall; Stenberg's accusing employee Bain in May 1965 of being union-minded; on March 8, 1965, Stenberg's telling Straley he knew someone had spoken to Straley about the Union; and on March 12, 1965, Svenson's statement to Roskopp that he was not keeping "his nose clean."

(3) *Threats*: Johnson's statement, in the context of keeping the Union out, to employee Strickland in mid-April 1964 about getting rid of people; Stenberg's and Svenson's conversation with Winters on July 7, 1964, about disturbing the relationship in the shop, and the act of sending him home without pay for "punishment"; and Svenson's statement to Hill on August 10 and 11, 1964 that he could let Hill go anytime he wanted to and that Hill might not be there tomorrow.

(4) *Inducing employees to revoke authorizations*: In early August 1964, Stenberg prepared a statement for Strickland which Strickland signed allegedly rejecting the Union; and in July 1965, Stenberg and Svenson accused Brown of filing charges against the Company and, subsequently, insisted that he sign a company-prepared statement disavowing any interest in the charge and in the Union.

The Trial Examiner further found that the interrogation by Respondent's counsel of the employees went far beyond anything permissible for the legitimate preparation of their case. Plant Manager Stenberg was also present at these conferences with employees and participated in the questioning. We find that such interrogation is violative of Section 8(a)(1) of the Act.

In addition to the above violations of Section 8(a)(1) of the Act mentioned in the Trial Examiner's Decision, we find the following conduct of Respondent, not mentioned in the Decision, was also unlawful:

(1) In late May 1964, Stenberg approached Roskopp in the repair department and asked him if Delbert Hill was talking about the Union. Roskopp replied in the negative.

(2) In early 1965, Strickland reported to Stenberg that cards were being passed out. Stenberg then read off the names of people he believed were passing out the cards. Strickland, however, refused to give a reply as to the names read off.

(3) On March 9, 1965, Svenson came into the department where Edwards and LaSala were working, called them together, and state: ". . . There are lots of advantages at John S. Barnes and one of them is that you can go someplace else and look for a job."

(4) In August 1965, Stenberg called employee Bain to his office and conversed about Bain's riding to work with Renick Shank. Shank had been on the Union shop committee, but no longer worked at Barnes. Bain told Stenberg he rode to work with Shank because his own car was broken down. Stenberg said he did not care about the car and threatened to fire Bain.

*(B) The 8(a)(3) Conduct*

The Trial Examiner found that the increase of hours of LaSala and Edwards was based essentially on antiunion

considerations. We agree, and conclude that by this action Respondent violated Section 8(a)(3) and (1) of the Act. For the reasons stated by the Trial Examiner, we find that the discharge of Roskopp, as well as the discharge of Brown, violated Section 8(a)(3) and (1) of the Act.

*(C) The Section 8(a)(5) Violation*

The Trial Examiner found that the Union had valid authorization cards signed by a majority of employees in the appropriate unit, and therefore Respondent's refusal to grant the Union's request for recognition was violative of Section 8(a)(5) of the Act. Accordingly, the Trial Examiner recommended a bargaining order and that all proceedings in the representation case be vacated, although there was otherwise sufficient evidence to set aside the election. We find merit in Respondent's exceptions in this regard.

In determining the Union's majority status, the Trial Examiner counted as valid at least seven cards signed by employees in the Union's 1964 campaign. The cards in question were white in color, and were about eight inches long, with a fold in the middle and a return address on the bottom half of the reverse side. The text on the top half of the card read as follows:

CONFIDENTIAL
AUTHORIZATION
CARD

In order that the National Labor Relations Board may conduct a secret ballot election, one-third of the employees must sign and return this card. If you care about your conditions, don't delay. Sign today.

CONFIDENTIAL

The text on the bottom half of the card, which was followed by space for signature, address, phone, employer, classification and shift, read as follows:

> I hereby authorize the International Association of Machinists to represent me in collective bargaining on wages and working conditions. It is my understanding that I will be invited to join should the union be elected to represent me.

Many employees who signed 1964 cards, but excluding at least the seven referred to above, signed again in 1965.[3]

Viewing the full text of the 1964 cards, we conclude that the cards do not clearly and unambiguously authorize the Union to represent the signers thereof for collective-bargaining purposes. The text on the top half of the card states that the purpose of signing the card is to obtain a Board-conducted election, and the authorization set forth on the bottom half is substantially tempered by another reference to an election. In contrast, the cards utilized by the Union in the 1965 campaign—but not signed by seven of the employees—were devoid of any reference to an election. Since the seven 1964 cards are necessary to establish majority status, we find that the General Counsel has failed to establish that the Union was the duly designated bargaining agent of the employees in the appropriate bargaining unit at the time of the demand for recognition.[4] Accordingly, we do not

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[3] The 1965 cards were yellow in color, and stated in heavy block letters across the top, "Yes, I want the IAM." Beneath that the card read, in ordinary type, as follows: I, the undersigned, an employee of _____ . . . hereby authorize the International Association of Machinists (IAM) to act as my collective bargaining agent with the company for wages, hours and working conditions. It is my understanding that I will be invited to join the IAM.

[4] The Trial Examiner found that the unit was comprised of 202 employees and that the Union had 107 valid cards, including the seven 1964 cards which we have rejected. We would modify the unit's scope to 204 by including employees Lindstrand and Beauchamp, both of whom were on extended sick leave. With respect to the cards of Don Shelby and Charles W. Shelby, we would also disavow the Trial Examiner's conclusion that more weight should be accorded the testimony of a person identifying the signature of his child than that of the person's siblings. These modifications, however, do not affect our ultimate computation that the Union lacked a valid card majority at the time of its demand.

adopt those portions of the Trial Examiner's Decision finding that Respondent violated Section 8(a)(5) and recommending a bargaining order, but instead we shall dismiss the Section 8(a)(5) allegation and direct that a second election be held.[5]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and orders that the Respondent, John S. Barnes Corporation, Rockford, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Delete paragraphs 1(a) and 2(a) from the Recommended Order and renumber the subsequent paragraphs accordingly.

2. Delete the first and last two indented paragraphs of the Notice marked "Appendix" that relate to bargaining and the appropriate unit.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not specifically found herein.

## DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be conducted among the production and maintenance employees in the appropriate unit, at such time as the Regional Director for Region 13 deems appropriate. The Regional Director shall direct and supervise the election, subject to the

[5] As we have disposed of the Section 8(a)(5) allegation on the basis of the patent ambiguity of the text of the seven crucial 1964 cards, we find it unnecessary to pass upon Respondent's contention that the Union solicited cards through oral misrepresentations that the purpose therefor was to obtain an election.

National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of issuance of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Lodge No. 1553, International Association of Machinists, AFL-CIO.

Dated, Washington, D. C.

FRANK W. MCCULLOCH, Chairman

JOHN H. FANNING, Member

HOWARD JENKINS, JR., Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

TXD-494-66
Rockford, Ill.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case Nos. 13-CA-6407
13-CA-6637
13-CA-7049

JOHN S. BARNES CORPORATION
and
LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

Case No. 13-CA-7027

JOHN S. BARNES CORPORATION
and
JOHN L. BROWN, An Individual

Case No. 13-RC-10159

JOHN S. BARNES CORPORATION, EMPLOYER
and
LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

*Edward T. Maslanka, Jerry P. Clousson* and *David C. Coleman*, for the General Counsel.

*Plato E. Papps*, Washington, D. C., and *Kenneth L. Black*, Chicago, Ill., for the Charging Party.

*Edward J. Fahy* of *Shultz, Fahy & Street*, Rockford, Ill., *John Holmstrom* of *Welsh & Homstrom*, Rockford, Ill., *Edward Haight*, Chicago, Ill., for Respondent.

Before: *Eugene E. Dixon*, Trial Examiner.

## TRIAL EXAMINER'S DECISION

### Statement of the Case

This proceeding brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard at Rockford, Illinois, on various dates from November 3, 1965, to January 13, 1966.

On May 11, 1964, the original charge in Case No. 13-CA-6407 was filed. Thereafter amended charges were filed on June 2, July 4 and 22, and August 14. On August 12, 1964, a Board election was held (Case No. 13-RC-10159) resulting in objections and challenges being filed by the Union which are still outstanding. On August 24, 1964, the original charge was filed in Case No. 13-CA-6637 and an amended charge was filed on October 12. On January 22, 1965, an informal settlement was entered into regarding these then outstanding unfair labor practice charges.[1] On March 29, 1965, an individual charge was filed in Case No. 13-CA-7027. On June 4, 1965, the original charge in Case No. 13-CA-7049 was filed and an amended charge filed June 10. On September 2, 1965, the Regional Director withdrew the settlement agreement. On September 7, 1965, the complaint and order consolidating the complaint cases was issued. On September 9, 1965, a further order consolidating the representation matter with the complaint cases was issued.

The complaint alleges various violations of Section 8 (a) (1), (3) and (5) of the Act. In its duly filed answer the Respondent denies the commission of any unfair labor practices.

At the hearing the General Counsel moved to amend the complaint by adding an allegation that on or about

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[1] Certain alleged discriminatory discharges were settled by payments for lost earnings, reinstatement not being desired by the individuals involved.

March 9, 1965 Respondent discriminatorily refused to grant a wage increase to Clyde Edwards. In their brief in an introductory section entitled "Statement of the Case" the General Counsel say that "Counsel for the General Counsel, in this brief, make the appropriate motion to further amend the complaint to add the transfer of Donald Rarrieck and reduction of hours of Roy Straley, which constituted violations of Section 8(a) (3) and (1) of the Act." In the circumstances I deny the motion.

Upon the entire record and from my observation of the witnesses, I make the following:

## Findings of Fact

### I. Respondent's business

At all times material herein Respondent has been a corporation duly organized under the laws of the State of Delaware and has maintained its principal office and place of business in Rockford, Illinois, where it has been engaged in the manufacture of hydraulic pumps and limited machine tools. During the calendar year 1964, in the course and conduct of its business, Respondent manufactured, sold and distributed products valued in excess of $500,000 more than $50,000 worth of which were shipped directly from its place of business in Illinois to other States of the Union. At all times material Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. The labor organization

Lodge No. 1553, International Association of Machinists, AFL-CIO, at all times material has been a labor organization within the meaning of Section 2(5) of the Act.

### Introduction

The Union's campaign to organize Respondent's employees began in the early spring of 1964. Just prior to

this time, about the first of the year, Respondent began moving its production facilities into a new plant in Rockford located in what is known as the Odin Industrial Plaza. The move took several months to complete. At the time of the hearing Respondent still maintained its executive offices and some engineering facilities at its old location.

As soon as the union organizing effort began, Respondent launched a vigorous counter-campaign. Among other things that Respondent did was to circularize its employees on numerous occasions setting forth its arguments against unionization and its reasons why the employees should not join the Union. The General Counsel contends that these communications considered in their overall context violated Section 8(a)(1) of the Act. This may be, but since there is substantial other conduct herein by Respondent that contravenes that section of the Act, I deem it unnecessary to make a specific finding on this manner. Likewise, there is considerable evidence regarding Respondent's officials standing outside the plant for long periods of time watching the Union as it handbilled the employees. This, too, the General Counsel contends was a violation of Section 8(a)(1) of the Act being tantamount to illegal surveillance. This too, may be correct, but again I decline to make a specific finding on it due to the fact that there is substantial other evidence in the record of Respondent's illegal surveillance.

The Credibility of Stenberg and Svenson

A literal plethora of violations of the Act was alleged in the complaint herein, the vast majority of them are being attributed to Respondent's President E. J. Svenson and to its Plant Manager William Stenberg. As a result these two testified in the hearing at great length. In their brief the General Counsel attack the credibility of these two witnesses and devote a substantial initial section of their brief to an analysis of that credibility. I

agree with the General Counsel's position and set forth my reactions and conclusions regarding this credibility as a preface to this decision.

Not only was Stenberg's testimony replete with equivocation, evasiveness, self-contradictions and often in conflict with other testimony or evidence offered by Respondent [2] but there were also direct conflicts between a sworn statement he gave to a Board agent on May 27, 1964, and his oral testimony before me. On the witness stand Stenberg testified in substance that working foremen are not supervisors and are nothing more than "A little bit more experienced" than other employees.

The evidence shows that Respondent classified Howard Olson and Phil Guetschow as working foremen. Stenberg denied on the stand ever having told Olson or Guetschow or anyone else that those two were supervisors. He further testified that Olson had no authority to reprimand, hire or fire, or discipline employees. In Stenberg's sworn statement of May 27, 1964, he had said that "Both Phil Guetschow and Howard Olson are supervisors. I per-

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[2] For example Stenberg denied calling anyone into the office or discussing there with anyone the Union or the question of voting in the pending Board election. This is in direct conflict with the testimony of Douglas Nelson who was called as a witness by Respondent. Nelson testified that shortly before the election he was called into the office and told by Stenberg that he should vote in the election. This was followed by a discussion of Nelson's eligibility to vote. Stenberg's testimony here is also in direct conflict with an admission in Respondent's request for review of the Regional Director's Ruling on Objections. Therein it was stated:

> . . . The Company received a letter from the union advising that (employees) Englin and Holder would act as the union's observers at the August 12 election. This came to Stenberg during the afternoon of August 8, 1964. He called Englin to his desk, showed him the letter, and said he was surprised to see Englin's name and was curious to know why Englin was interested in a union now . . . There was a frank and friendly discussion . . . Stenberg told Englin point blank that he was not trying to change his mind about the union—he was just curious as to Englin's reasons.

sonally so informed them and I . . . made this statement to (induce) the Board Agent to permit my presence while . . . their statements (sic) are taken. They are management and so is Eric Johnson." In the same statement in explaining why he had discharged an employee by the name of McVay he further stated, "Another reason was his wandering in the plant. I'm sure his foreman, Howard Olson, reprimanded him for this many times. We have a discipline system and Howard Olson could have disciplined McVay for it."

Clearly, Stenberg's credibility is effectively and completely impunged by the foregoing.

The testimony of Respondent's president Svenson is hardly more worthy of credence than Stenberg's. Not only does it, too, reflect many conflicts and inconsistencies but it also shows at times a lack of candor and a disposition to quibble and fence with counsel.[3] An example of Svenson's lack of candor appears in his testimony regarding his having called to his home and talked to most if not all the alleged supervisors herein whose ballots were challenged in the election. This occurred during a recess in the hearing while Svenson was recuperating from surgery. The entire context of the record including testimony of Respondent's own witnesses shows that the purpose of Svenson in calling these people to his home was directly and primarily connected with the testimony about their supervisory status. Yet Svenson testified that he ". . . didn't call them in for any other purposes except . . . to let them know (that he) was recovering very nicely[4] and . . . would be back in the plant again" and that they had "nothing to worry about."

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[3] For a similar reaction to the testimony of Svenson some 15 years earlier see *John S. Barnes Corporation*, 92 NLRB 589 at page 594 particularly footnote 8.

[4] He had undergone surgery shortly before that time at the Mayo Clinic.

Like Stenberg, there is also a direct conflict between Svenson's oral testimony and a sworn statement he gave a Board agent on May 27, 1964. Thus, in the statement he said that Phil Guetschow was "A foreman in the machine shop and is a supervisor in charge of setting up machines." On the witness stand Svenson denied that Guetschow was a supervisor.

Svenson claimed in effect that he had been coerced by the Board agent into giving the statement by being told that if he did not make a statement all the charges against Respondent "would be held true." This explanation serves only to add to my skepticism about Svenson's credibility. In the first place if he was told what he claims he was told, it would hardly justify his making any misrepresentations under oath. In any event, from my observation of Svenson during this relatively lengthy hearing both on and off the witness stand it was obvious to me that Svenson was one of the least likely persons that I could think of who could be coerced by anyone, Board agent or otherwise, into giving a statement.

Considering the serious reflection cast upon the credibility of Stenberg and Svenson I have credited in substantial measure, as will be seen, the General Counsel's testimony in matters involving these two witnesses. In disposing of this evidence I do not attempt to analyze word by word the entire record nor to set forth the two company officials' versions of incidents or their denials thereof.[5] My doing this should not be taken as a failure on my part to have examined and weighed the testimony that these two gave. It simply means that I do not credit, in such instances, their testimony.

## Interference, Restraint and Coercion

On April 1, 1964, according to Roy Straley's credited testimony Respondent's President Svenson took him into

[5] A great deal of the evidence adduced against them stands undenied in the record.

an office of the production floor and said to him, "I understand you are not happy here." Straley replied, "Yes, I am." Svenson said, "I heard you were soliciting union cards." Straley denied this, and Svenson said, "If you need help or anything, be sure to come to me, because I am here to help protect you from the Union." The conversation ended with Svenson's asking Straley if he was going to the union meeting that night. Straley replied that he bowled on Wednesdays. There was, indeed, a union meeting that night at the union hall on 15th Avenue in Rockford. This was the first meeting open to all of Respondent's employees.

According to the testimony of former employee Joel Winters on the day following the union meeting he asked his supervisor, Eric Johnson, for a wage increase. Johnson asked him if he had gone to the Union meeting the night before. Winters said that he had. Johnson said, "Well, I can hardly give you a 10-cent raise and have you attending union meetings. It would make me look kind of bad. You'll have to promise not to go to any more meetings before I will give you the raise." Winters said, "Okay, I promise that" and as he started to walk away Johnson said, "By the way, (pointing to the employee) was Wally Williams at that union meeting?" Winters said, "I don't know. I don't have to answer anything like that" and walked away as Johnson pointed to some other employees.

About this same time according to the testimony of Claude Livingston, Johnson came to him in the plant and asked, "how this union deal got started, whether it had gotten started in the old plant or the new plant." Livingston replied, "I don't know, Eric, I don't know anything about it." Johnson then asked if he "knew any of the guys that were involved in this union deal" and Livingston said that he did not. Johnson then said, "Well, I will tell you one thing. Whoever the guys are that

started this union deal, they are not going to be here very long."

About 2 weeks later according to the testimony of employee Thomas Strickland he asked Johnson in the shop for a wage increase and a transfer to the stockroom. Johnson asked Strickland how he felt about the Union and Strickland replied that he was against it. Johnson then asked if Strickland would help keep the Union out. Strickland said that he would. Johnson then pointed to two employees one of whom was Roger McVay and said, "If we could get rid of people like that, we wouldn't have any problems at all." [6]

In his testimony, Johnson admitted that he had probably discussed the Union with employees during 1964 and that he recalled asking Livingston whether he had attended a union meeting but denied interrogating any other employees about union meetings. Except for this testimony none of the foregoing was denied by Johnson. I credit the General Counsel's witnesses.

On April 23, another union meeting was held. The following day Johnson spoke to Livingston who testified credibly about it as follows:

> Mr. Johnson asked me if I went to the union meeting last night. And I said, "yes, Eric, I did. I am not going to lie to you." He said, "Did they have a good crowd?" I said, "Yes, they (had) a fairly good crowd." He asked me (why) this was going on. I said, "Eric, at least if we get a union in here, we will have better wages and better conditions." He mentioned to me, he said, "I will tell you one thing, if the Union does get in, you are not going to have it as easy as you have had it." I said, "It doesn't make any difference, at least I will be making a decent wage." And then from what I could gather looking at him, he must have gotten mad because he just shook his head and walked off.

[6] The record shows that McVay was a supporter of the Union.

Shortly after the same union meeting, according to the testimony of Jim Seaton, Johnson came up to him in the plant and asked if he had attended a meeting. Seaton replied that he had attended a baseball meeting that evening and Johnson said that he had heard there was a union meeting. The foregoing testimony was not denied by Johnson and I credit it.

A third union meeting was held on May 1, 1964. Shortly before this meeting, according to the credited testimony of former employee James Carlisle, Plant Manager Stenberg stopped him in the plant and asked him how he felt about the Union. Carlisle answered that he was against the Union. Stenberg then asked him if he was going to the union meeting and Carlisle said that he thought he would. According to Carlisle's further credited testimony on the day after the meeting he was called into Stenberg's office. There Stenberg asked him who had been at the meeting. When Carlisle did not make an immediate reply, Stenberg started reading the names of the employees to him. Carlisle then stated which of the employees Stenberg named had been at the meeting. At this time Stenberg also asked Carlisle if he had signed a union card. Carlisle replied also that he had not.

According to the credited testimony of Winters, around May 10 Supervisor Howard Olson [7] came to him and remarked that employee Wally Williams had gotten a "raw deal." When Winters asked why, Olson stated that Johnson had refused Olson's request for a transfer for Williams because Williams was a union troublemaker." Olson did not testify. I credit this testimony notwithstanding that Johnson denied that Williams had requested a transfer in 1964.

[7] The supervisory status of Olson is at issue. His status along with that of Doug Nelson and Gerald Smuck among others (who also are involved in some 8(a)(1) incidents) is disposed in the "Refusal to bargain" section of this Decision.

During May 1964, according to the credited testimony of former employee Vernell Sarver he was called into Stenberg's office. When he got there Sarver told Stenberg that he knew what Stenberg wanted, that Stenberg knew that he had been to a union meeting. When Stenberg confirmed this, Sarver assured him he had no affiliation with the Union but had just gone to see what it had to offer. Then a discussion ensued as to what was "the problem there." During the conversation Stenberg told Sarver that he knew who was at the union meetings. When Sarver apparently showed reluctance at confirming the identity of any of these employees, Stenberg pulled out a little black loose-leaf notebook and said that he had "got all the names down and . . . knew who they were and would take care of that."

According to the further credited testimony of Winters, on July 7 he was called into the office and accused by Stenberg and Svenson of being "one of the fellows behind this union trouble," and told that Respondent was "going to try to do something about it." Then Svenson said, "We heard you had been talking about the union during working hours." When Winters denied this, Svenson said, "I think we can prove you have. We don't like guys like you coming in here, disturbing the relationship we have with the people in our shop. . . . it is a lot of trouble for us, if you just leave us alone." Then Svenson said, "For your punishment we are going to send you home at 3:30 without pay."

The following day when Winters returned to work he was called into Stenberg's office. There he was told that Respondent had decided to let him continue working. At this time Stenberg told Winters about the former's job with the Roper Company and what a "raw deal the Roper people got from the Union." Stenberg went on to say that "if the Union got in at Barnes the hours would be cut to 40, bonuses would be eliminated, and if a raise was granted, it would only be a nickle and you would

probably have to go out on the street for 6 months to get that." Stenberg ended the conversation by asking, "by the way, when is the next handbill . . . going to be out."

According to the credited testimony of Bobby Holder, late in July Svenson came to him and another employee in the shop and said, "I don't know what I can say and what I can't say. I think under the freedom of speech we have here I can say I will not work for a Union." [8] Shortly after this on another occasion, Svenson came into Holder's department and remarked, "There are rumors around that the Union brought you that Thunderbird you are driving. I just wonder whether that is true or not." Thereafter, practically everytime Svenson saw Holder he called him Thunderbird and would say, "How are you doing, Thunderbird."

Vernell Sarver testified about a conversation with Stenberg in late July or early August as follows:

> I said how about what I have been hearing about this 40 hour cut if the Union gets in and that. He said, "Well, this is about all we can do. If it gets in, we will cut down to 40 hours." I said, "Man, I can't live on that stuff," he said, "You know how to vote?" And I said, "That is right."

The Union election was scheduled for August 12. On August 5, Respondent enclosed a card with each employee's paycheck which read "VOTE NO" on Wednesday, August 12." Edwards testified credibly that on that day Svenson came to him and said, "In your paycheck you will find two pieces of paper, one of those you can cash for money and the other is not worth a Goddamn. If the Union gets in, there will be no more pieces of paper you can cash for money, and I don't know what you will do with the other." Shortly after this, many of

[8] It is interesting to note that in a letter from Svenson to the employees dated August 7, he had stated, *"FOR THE RECORD:* I am absolutely opposed to a Union—in our plant."

these "VOTE NO" cards were posted around the plant. Svenson admitted that Respondent had purchased the "VOTE NO" cards that had been distributed with the employee checks. He also admitted that he had seen several of these cards posted around the plant, but gave no instructions to have them taken down. According to the undenied and credited testimony of Edwards, among the many "VOTE NO" posters he saw around the plant, one was on a lift truck whose operator drove through the plant blowing the horn and pointing to the poster. Eric Johnson standing smilingly nearby did nothing about it.

According to the credited testimony of Roy Schell shortly before the election he had gone over to a machine operated by employee Jim Cole in search of a tool. A "VOTE NO" sign had been posted on Cole's workbench and Schell asked who had posted it. Cole replied that it had been posted by Foreman Nelson and told Schell to take it down. Schell did so and walked back to his machine. As he did he saw Stenberg watching him through the office window. A few minutes later Schell was called into Stenberg's office, where he was accused of loafing. Schell explained that he had gone to Cole's machine in search of a tool. Schell's Supervisors Phil Guetschow and Marvin Johnson who happened to be present corroborated Schell. Stenberg told Schell that the supervisors had saved his job. As Schell was leaving the office, Stenberg commented that he now knew that Schell was for the Union.

After the "VOTE NO" signs were posted around the plant, some "VOTE YES" signs began to appear. According to Schell's undenied and credited testimony, he and employee Roy Straley posted a "VOTE YES" sign shortly before the election and were ordered to tear it down immediately by Supervisor Doug Nelson.

Eugene Englin was named as one of the union observers for the election. Shortly thereafter he was called

into the office. About what transpired there, Englin testified credibly as follows:

> Mr. Stenberg said, "I am surprised." And I said, "I figured you would be." And then we sat down at his table. First he said I would like to tell you the Company is going to file a charge against you—and take you to court as an individual. At that time I replied for what. And then he said we have reason to believe from a good source that you have been passing on names that should not have been passed onto the Union. In which I replied, "What names?"
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> * * * *
>
> So, that conversation proceeded on, and he showed me the letter that my name was on with Bob Holder, we were to sit as union observers.
>
> At that time he asked me what I thought I could gain out of a union. Why I was doing this. That I am not doing it merely because I am a do-gooder, he wondered what I would personally gain out of it and I said nothing.

Englin then proceeded to explain his position regarding the Union after which Stenberg along with Chief Inspector Frank Dergins (who was present) stated their side at some length. It was explained to Englin that Svenson had pioneered the Company and worked all his life; that he did "not want any union whatsoever to control his company or to tell him how to operate his company. (That) He would close his doors before he allowed this to happen." Dergins told Englin of an experience he had in the Army where he had been the spokesman for a group that had a problem and how as a result he had been "left holding the bag." Dergins said that this would happen to Englin. As a parting comment, Stenberg told Englin to think over what they had discussed and to make sure that he made the right move and not to do something that he would "sorry for."

According to Thomas Strickland's undenied and credited testimony, about a week before the election he had given a statement to a labor board agent. He then went to see Stenberg and showed him a copy of the statement and added that he had filed charges against the Company. Strickland told Stenberg that he wanted to drop the charges. After reading Strickland's statement, Stenberg told him that he would prepare a statement for Strickland's signature. The following day, Strickland signed a statement that Stenberg had prepared. It read as follows:

> I Thomas Strickland drop all charges against John S. Barnes, Corporation and don't want anything else to do with the Union.

Strickland left the statement with Stenberg who told him that he would turn it over to the Company's lawyers, that Strickland would have nothing to worry about.

According to Delbert Hill's credited testimony, about 2 days before the election Svenson came up to him in the plant and asked him if he had holes in his head. Hill replied, "No," and added, "There is one thing we do agree on, this place does need a Union. That is why I am trying so hard to get one in and you are trying so hard to get one out." Svenson replied that he could let Hill go anytime he wanted to. A day or so later, Svenson came to Hill again and said, "This is the day we tangle." He then told Hill to mark his ballot with red ink because he might not be there on the morrow.

According to Edward's credited testimony, Svenson also engaged him in a conversation in the plant on the day of the election. Svenson said to him, "Today we fight." Edwards replied that he did not see where it would be necessary to fight and that the matter would be taken card of by a democratic vote. Svenson claimed that Respondent would win the election. Edwards said that he was "not too concerned," about the outcome. Sven-

son said, "You will be concerned after I win this election."

The day after the election, the Union distributed a handbill involving a cartoon presumably uncomplementary to Svenson. On the morning after the handbill was distributed, according to the credited testimony of Englin, Maintenance Foreman Gerald Smuck and employee James Carlisle walked him to the entrance of the plant and there berated him in connection with the handbill. Carlisle even threatened to give Englin a beating. After this incident, Englin went to the coffee machine followed by Carlisle. As they were standing there, Svenson came up and shook Carlisle's hand saying "I would like to shake a hand of a man that was with me." Svenson then pointed at Englin and said, "Not this man," and walked off.

From the time of the election until December, according to Strickland's testimony, he had many conversations with Stenberg in which he kept Stenberg informed about what was going on in the plant. In one of these conversations he told Stenberg that union cards were being again passed out. When Stenberg asked him who was passing out the cards, he told Stenberg that he "would help him (all) he could to help keep the union out, but . . . wouldn't give him any names." Stenberg replied that he did not need to do so because Stenberg "knew everybody down there anyway."

According to Strickland's further credited testimony, some of his conversations with Stenberg pertained to letters Strickland had received from Board agents seeking an interview with him. Strickland showed these letters to Stenberg who advised him not to see the Board agents. Stenberg also advised him not to sign anything if he were contacted. Acting on this advise, Strickland refused to sign a statement when contacted by a Board agent. Stenberg gave similar advise to two other employees in late 1964—Roy Schell and Thomas Kruse. Schell testified credibly that Stenberg came to him in late Septem-

ber and told him that if the government lawyers got in touch with him "not to sign anything because the Company lawyer had told him if we did they would get us in the hearing and make liars out of us.". About this matter Kruse testified substantially the same as Schell.

According to the credited testimony of Jack Huckabee on March 17, 1965, he stopped Stenberg in the shop to inquire why he had not received a pay increase that he had requested. Stenberg replied that the employees "keep going down to the Union hall" and added that he "couldn't keep everything going at the same time."

According to the credited testimony of Edwards and Lasala, Svenson came to them on March 30, 1965, and began a conversation by asking if they had read an article in the Rockford evening paper concerning a Supreme Court decision. Edwards replied that he had. Svenson then displayed a clipping from the newspaper and observed, "it is about time that the government has given management some of our rights . . . now then I can close these doors anytime I want to."

According to the credited testimony of Larry Bain, he was called into Stenberg's office in May of 1965 where he was told that he was getting a wage increase that he had requested. He and Stenberg then got to talking about other things and Stenberg said, "Larry, I know you are union minded. You know if the Union comes in Svenson will close the doors—John S. Barnes would close the doors." Bain said something to the effect that they could not do this. Stenberg went on to say that "they could do it and that the way they could do it is by selling their machinery so that the stockholders would get their money back and no one would be hurt about it."

The hearing in this case began on November 3, 1965. Several employees testified credibly about being called into Stenberg's office after the hearing began and being questioned by Respondent's counsel in the presence of

Stenberg. Thus, LaSala testified that he was called into the office November 2 or 3 where Stenberg introduced him to Respondent's counsel who told him that they would like to ask a few questions. According to LaSala he was advised that he did not have to answer the questions if he did not want to. He was then asked "what was going on or what was wrong at the shop." He was shown an authorization card and asked if he had signed such a card. He was also asked if he thought the employees' union meetings had been kept under surveillance. Finally he was asked if any reason had been given to him for the extension in his working hours.

Thomas Kruse testified that he was called in the first week in November where he was asked if he "was participating in any activities as far as the Imperial Motel 400" was concerned.[9] He was asked what questions the General Counsel's representative had been asking him at the motel. According to Kruse, in addition to Stenberg's being present, on this occasion, he also participated in the questioning.

Employee Madeline Stone testified that she was called into Stenberg's office late in 1965. Two other gentlemen were with Stenberg. She was shown a blank authorization card and asked why she had signed a card. She was also asked where she had received the card. Finally, she was asked if she had ever attended any of the union meetings. Another employee Betty Hollon also testified about being called into the office in early November where she was introduced to Respondent's counsel. She was asked if she had signed a card and replied that she had. She was then asked why she had signed a card and how she thought the Union would help. None of Respondent's counsel testified and the rebuttal such as it was rests solely on Stenberg's testimony. I credit General Counsel's witnesses.

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[9] One of the General Counsel's representatives had been interviewing witnesses at this motel.

It is clear from the foregoing evidence and I so find that Respondent interfered with, restrained and coerced its employees with a course of conduct beginning just prior to the Union's first meeting and continuing up to the time of the hearing herein.[10] This conduct involved numerous threats of reprisal against the employee because of the union activities,[11] systematic and continued interrogation of them about their own and their fellow employees' union activities,[12] disparate enforcement of what was tantamount to a no-solicitation rule by the posting and publicizing of "VOTE NO" signs while at the same time preventing and suppressing any contrary action; advising employees to refuse to cooperate with Board agents; refusing a wage increase or transfer or giving the impression that a wage increase was refused because of an employees union activities;[13] conditioning a wage increase on a promise of abstenance from union

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[10] The interrogation by Respondent's counsel of the employees went far beyond anything permissible for the legitimate preparation of their case.

[11] Johnson to Livingston on April 2, 1964, of discharge of Union instigators; Johnson to Livingston April 24, that work would become more arduous. Stenberg to Winters July 8, 1964, of elimination of bonuses and curtailing of the size of wage increases; Svenson to Holder in late July 1964 that he would not work with a union; Stenberg to Sarver August 5, regarding a cut in hours; Svenson to Edwards August 5, 1964 regarding no more pieces of paper to cash; Stenberg to Englin prior to the election about Englin's holding the bag and about the closing Respondent's doors; August 12, Svenson to Edwards that the latter would be concerned after Respondent won the election; just after the election, Carlisle's threat of physical attack on Englin in the presence of Schmuck under circumstances amounting to condonance; March 3, Svenson to LaSala and Edwards that he could now close the doors anytime he wanted to; May 1965 Stenberg to Bain that Respondent would close its doors.

[12] These are so numerous and obvious that there is no need for specific repetition.

[13] March 17, 1965, Stenberg to Huckabee; May 10, 1964, Olson to Winters.

activities;[14] and telling employees or implying to them that their union activities are under Respondent's surveillance.[15] The record also reflects as shown below substantial evidence on Respondent's part of actual surveillance.

It is clear from Stenberg's interrogation of Straley on April 1 about attending the union meeting that was held that evening (as found above) that Respondent knew in advance that such a meeting was going to be held. According to the testimony of Bobby Holder, at 7:30 that night as he was walking toward the union hall entrance he saw Stenberg driving by on 15th Avenue looking toward the hall. A short while later when he had come outside to get some fresh air he saw Personnel Manager Jednick sitting in his car at the traffic light at the intersection of 9th Street and 15th Avenue. The union hall is located on the corner of 9th Street and 15th Avenue.

The Union's second meeting was held on April 23, 1964. According to Winter's testimony, as he was driving toward the hall with Vernell Sarver they saw Stenberg turn south into 6th Street at the intersection of 6th Street and 15th Avenue. They followed him. Stenberg went around the block, drove over to 9th Street and drove north on 9th Street past the union hall slowly. After Stenberg had passed, the two employees put their car in a parking lot opposite the union hall. As they crossed the street they observed Personnel Manager Jednick in a car at the intersection of 9th Street and 15th Avenue. When the light changed Jednick drove past the union hall. Bobby Holder testified that he saw Stenberg at about 7:30 in the evening drive by the hall headed east on 15th Avenue and that a few minutes later he saw Stenberg drive slowly by the hall looking toward it this time driving west on 15th Avenue.

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[14] April 2, 1964, Johnson to Winters.

[15] May of 1964 Stenberg to Sarver; Fall of 1964 Stenberg to Strickland.

The undenied and credited testimony shows that in February 1965, John Brown discussed with other union leaders, Clyde Edwards, Sam LaSala, and Peter Roskopp what steps they could take to "further the movement in the machinist Union." To this end Brown met with a representative of the United Auto Workers Union on two occasions in February with the result that a meeting for Respondent's employees was arranged for March 8 at the UAW hall located on North Second Street in Rockford.

Overhearing Brown trying to get some employees to come to this meeting, employee Thomas Strickland (who testified credibly) called Plant Manager Stenberg on the telephone [16] and told him that "there was another Union trying to get into Barnes and they were having a Union meeting that night"; that he didn't know where the meeting was to be held but that he "would find out for him." This he did, reporting to Stenberg by telephone an hour later.

On this same day, employee Roy Straley learned of the meeting and passed the information on to fellow employee Alby Kirby. A short time later Stenberg approached Straley at his machine and commented that he had heard that someone had spoken to Straley about the Union. Straley admitted it, telling Stenberg that he had been invited to a union meeting that night by Renick, Shank, and Sam Huckabee.

That evening, according to the testimony of employee Frank Kolcon, as he was walking north on the west side of North Second Street towards the union hall, he observed Stenberg sitting in a car at the intersection of

[16] Strickland had been supplying Stenberg with information about the union activities of the employees prior to this and at this point, because employees were talking about his "going upstairs (to the office) too much," he decided that it was wiser to call Stenberg on the telephone. Thereafter his contacts with Stenberg were made that way, or Stenberg would come to see him in the stockroom.

North Second Street and State Street. Stenberg's car was next to the curb on the west side of North Second Street and was headed south. Stenberg had stopped for a traffic light at the intersection and his directional lights were indicating a right turn into State Street. As Kolcon crossed the intersection he was no more than a few feet from Stenberg's car. Kolcon exchanged glances with Stenberg and nodded his head, but Stenberg did not acknowledge the greeting. After Kolcon had passed Stenberg's car Kolcon proceeded north to the entrance of the union hall. There he found John Brown standing on the sidewalk just outside the union hall. According to Brown's testimony, he had stationed himself just outside the entrance of the union hall for the purpose of directing late employees to the meeting room.

The following day, according to Sam Huckabee's credited testimony, Stenberg called Huckabee into his office and told him that he was surprised at Huckabee. When Huckabee asked in what way, Stenberg alluded to his union activity. Huckabee pointed out that he was dissatisfied with his pay and insurance and that some of the employees were also complaining about working conditions. Stenberg replied that the Company was "working on the insurance." In the conversation he also told Huckabee that he could name every employee who had gone to the Union meeting the night before.

On March 22, 1965, another meeting of Respondent's employees was held at the UAW Hall on North Second Street. Several employees testified about seeing Stenberg drive by the Union hall several times that evening just before the meeting began. Thus, former employee James Carlisle testified that he saw Stenberg's car drive by the hall (which incidentally was located on a one way street) three times, twice on the far side of the street and once on the near side. While Carlisle could not see who the driver was, he did recognize the car and the female passenger in the car as "a girl from the bowling alley

Stenberg generally took" out. That it was indeed Stenberg driving the car was confirmed in the testimony of several other employees who testified that they saw him drive by with a female passenger. According to Carlisle's further testimony, the following morning he asked Stenberg if he had been driving by the union hall the night before. Stenberg denied that he had done so. When Carlisle told Stenberg he had seen him drive by three times, Stenberg finally admitted that he had driven by the hall the previous night.

In his testimony Stenberg admitted that on occasion during the periods in question he drove past both the UAW Hall on North Second Street and also the Machinist Hall located on Ninth Street in Rockford. He denied however that he knew of any union meetings that were being held on such occasions, or that he drove by them for the purpose of engaging in surveillance of the employees' union activity. He claimed that the moving from the old plant to the new was done largely at night over a protracted period and that he frequently made trips at night between the two plants for this reason. His customary route on these trips took him past the Machinist Hall. He also testified about an occasion in March 1965, when he had driven past the UAW Hall with his date one evening on the way to the theater which was located about a block and a half from the hall. Because he had difficulty finding a parking place he may have driven around the block (and thus passed the hall) a couple of times but that if so it had nothing to do with the Union. He further testified as follows:

> "Now, if this is the night that someone says they saw me in testimony here, someone else, I can't recall who, it might have been one of the men on the witness stand, but I am not positive about it, said to me they had seen me the night before driving around downtown where they were going to a meeting or something. But, prior to that person telling me that the next morning, I did not know that these

people were going to be meeting in a UAW Hall or any other hall."

In all of the foregoing I do not credit Stenberg's testimony but accept the testimony offered by the General Counsel's witnesses. Thus I find contrary to his denial that Stenberg was fully informed about the pending meetings that were scheduled for April 1, 1964 and March 8, 1965 before he drove by the respective union hall on those occasions; that he told Huckabee a day after the March 8 meeting that he could name every employee that had attended that meeting; and that he admitted to Carlisle having driven by the UAW Hall on the evening of March 22. Accordingly, I find that Stenberg's driving by the Machinists Hall on April 1 and 23, 1964 and by the UAW Hall on the evenings of March 8 and March 22, was for the purpose of observing who among the employees were attending the Union meetings and that this conduct amounted to surveillance of the employees' union activities in violation of Section 8(a)(1) of the Act.

I also find that Stenberg's comment to Straley on March 8 that he had heard that someone had spoken to Straley about the union was tantamount to interrogation about the matter by Stenberg. I further find that Stenberg's statement to Huckabee on March 9 that he could name every employee who had attended the union meeting the night before was meant to convey to the employees that their union activities were under Respondent's surveillance, both matters being further violations of Section 8(a)(1) of the Act.

In addition to the foregoing violations of Section 8(a)(1) of the Act, the General Counsel offered evidence upon which they contend (and I agree and so find) that Respondent also interfered with the rights of the employees by restricting their movement about the plant because of their union support.

Thus, late in May of 1964, according to Delbert Hill's credited testimony, he was in the parking lot in his car during lunch time signing up some employees for the Union. He glanced up and saw Eric Johnson looking in the back window of the car. When Johnson saw him he turned around and walked into the plant. Shortly after this Johnson informed Hill that Respondent could not give him a raise that he had requested because his "absentee record was terible." Hill told Johnson that he had not missed a day from the time he had started working for Respondent. Johnson said, "That is what they told me" and walked off red faced.

In his work in small pump repair Hill originally had to make many trips to other parts of the plant. In early June, however, he was ordered to stay in his own department and others were called upon to get parts for him or to run his errands. On the few occasions after this that he himself went to the shipping department or to the stockroom he was summarily ordered back to his own department—once by Svenson and another time by Johnson.

The day after the election, according to the credited and undenied testimony of Englin, Svenson and Stenberg came to him together in the plant and informed him that from then on he was to take orders from Eric Johnson and was to do everything Johnson told him to do. Shortly after this Johnson approached and told him that he wanted Englin to stay very close to a particular assembly bench (to which Johnson pointed) and not to "wander off." Later, Svenson again came by and asked him if he was doing Johnson's bidding. Englin said that he was and Svenson told him to "make sure" that he did.

Respondent's explanation of the curtailment of Hill's movement was that there were too many people at that time going independently to the stockroom and as a matter of efficiency Hill among others was restricted in this respect. The only explanation regarding the Englin mat-

ter was by Svenson who testified that Englin's Supervisor Dergins was on a trip and Englin had been told that in his absence Englin "would take orders from Eric Johnson."

According to Sam Huckabee's undenied and credited testimony, about August 9 or 10, 1965, Svenson came over to his machine and asked him in effect if he knew that he was not supposed to go to the coffee or coke machines. Huckabee said that he "thought they were for the public." Svenson replied, "as of now you stay away from them," and walked off.

## Discrimination

### The discharge of John Brown

John Brown was discharged by Respondent on March 9, 1965 after having worked for Respondent approximately 12 years. Svenson testified as follows about the employment of Brown: Brown started as an assembler in 1953. He worked for Eric Johnson until October 15, 1959. He was then selected as a leadman of a new assembly unit. Five months later he was sent with Ray Calson and Chief Inspector Frank Dergins to Detroit to investigate the rejection of some three or four thousand pumps. When Brown returned from Detroit, Svenson relieved him as leadman on the grounds "that he had no ability to handle men and (Respondent) had lost several men due to his inability." [17] Svenson did not want to fire him "then" and offered him a job on "model and experimental work" where he would have no one to supervise.[18] Brown was also given a 10-cent raise at this time.

Brown proved to be very difficult to handle in the model shop. Because of complaints about his not being on time

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[17] This is an interesting commentary by Svenson regarding the supervisory status of leadmen.

[18] Another interesting commentary by Svenson on the supervisory status of leadmen.

and complaints about not doing a job properly from the engineering department, Svenson had to reprimand him from time to time and "showed him his absentee record." In March of 1964 Levine complained about working with Brown and "getting blamed for the work Brown was doing" and threatened to quit if he had to work with Brown any longer. Svenson then transferred Brown to the new plant on some machine tool hydraulic units. He worked there until September 1964 when "it was necessary to transfer him to a stockroom in order to keep him from wandering all over the shop." Finally, after reprimands by Burchett and Stenberg in January and February 1965, he was discharged. The discharge was discussed with Stenberg and it appeared that Brown "refused to abide by the Company's rules. He refused to come in on time. He bothered the daylights out of (Respondent's) employees . . . ."

On cross-examination Svenson testified that Stenberg discussed with him from time to time the difficulty that he had in keeping Brown at his work and disclosed to Svenson the reprimands he had written in connection with Brown. The first such discussion took place, according to Svenson, in April or May of 1964. Stenberg's complaint was "that Brown was difficult to control. He would not be governed by the company rules and regulations." This matter was discussed three or four times by them in 1964. Stenberg revealed "that he had talked to Brown about his moving around the plant and not staying put at his working place." While working in machine tool assembly Brown had no occasion to go from one place to another in the plant. When he started working in the stockroom, "he was instructed to stay in the stockroom because there was no reason for him to move from one place to another. The material he handled was trucked . . . ." In Svenson's visits to the plant he observed Brown moving about the plant but did not speak to him about it but relied on Stenberg to do so. This he did because he did not want to "step over" his admin-

istrative or supervisory people. He and Stenberg discussed Brown a few days before he was discharged. They "discussed the detrimental effect Brown had on the other employees and that (Respondent) had given him certain opportunities that he did not accept . . . in any serious and willing . . . manner." Stenberg told him that he could not get Brown to listen to reason and accept the rules and regulations of the Respondent. Svenson told Stenberg that Respondent "should not have a man of his caliber to jeopardize the welfare of the rest of the employees."

On direct examination Stenberg testified as follows regarding the discharge of Brown: Brown was discharged "for his last infraction of a Company rule . . ." —namely "being away from the spot where he was suppose to work and engaging other employees in conversations during working hours for an extended period of time." He had called Brown into the office in February to discuss his absenteeism. He told Brown at that time that "his absenteeism was actually getting worse" since their last talk about it [19]—that in the two months of 1965 he had already exceeded the total number of absences he had incurred in the entire year of 1964. Brown's "excuses" were the weather, the road—." Stenberg told him that "he must improve and that this was his final reprimand," that he would not be called in again about company rules, "that this is it."

On March 9, shortly before noon Stenberg had Burchett bring Brown to the office. There Stenberg showed Brown a copy of the rule against wandering in the plant and asked him if he was not aware of it. Brown said he was. Stenberg told Brown that he "had observed him away from his place where he belonged for an extended period of time" talking to maintenance men who were working on a project with which Stenberg was "directly

[19] Stenberg did not say when their last talk was supposed to have taken place.

involved"—that of setting up a new assembly line. When asked by his counsel if there was any reason for Brown's being at that place, Stenberg answered, "None that I know of. None that I can think of." Nor, according to Stenberg's further testimony, did Brown offer any explanation.

Stenberg told Brown "that this was the final straw"; that he had discussed the matter with Svenson and that the decision was that they "would terminate him as of right then." As to when Stenberg had observed Brown's conduct, Stenberg testified that he believed that it was the afternoon of the day before his discharge or "possibly the day before that, (he was) not positive exactly." Stenberg testified that he was unaware of Brown's participation in the March 8 meeting at the UAW hall and that he was not aware that Brown was active on the Union's behalf until the beginning of the hearing herein.

From Stenberg's further testimony on cross-examination, it appears that the maintenance men to whom Brown was seen talking were Donald Kotkamp and James Carlisle. However, Stenberg made no attempt to find out from them what business if any Brown was conducting with them when he saw Brown talking to them. Nor, indeed, did Stenberg at any time take the matter up with Brown's supervisor, Burchett. It further appears that Stenberg had a conversation with Svenson several months prior to Brown's discharge concerning "his repeated disregard for Company rules and regulations, coming to work late." At that time, Stenberg told Svenson that Brown's "excuse was he over slept. He would leave in the afternoons and his excuse was that he had business to attend to. He would go out at lunch and he would come back late." According to Stenberg his conversation with Svenson regarding Brown's termination occurred either on the morning of the discharge or the afternoon before—Stenberg was not positive which. In this conversation Stenberg told Svenson that Brown was

again wandering around the plant in disregard of his previous final warning and that Stenberg wanted to discharge him. Svenson told Stenberg that he had "put up with him about as long as anybody could" and that if he wanted to discharge Brown it was "okay" with Svenson. Stenberg was "almost positive" that he had only one conversation with Svenson about Brown's discharge and that it was carried on over the telephone.

The only other person who testified regarding Brown's employment on behalf of Respondent was Knute Levine.[20] He testified that he had worked with Brown 4 years and that "after a certain time" his workmanship deteriorated and he did not turn out the work that Levine expected of him. As time went on it got worse so he asked Svenson to be relieved of Brown or for a transfer for himself.

A memorandum in Brown's personnel file dated March 20, 1964, indicates that at that time he was told[21] he had been tardy 25 times, absent 5 times with 14½ hours off presumably in 1961; in 1962 he was tardy 26 times and absent 9 times with no hours off; in 1963 he was tardy 20 times and absent 21 times with 35¾ hours off; in 1964 to the date of the reprimand he had been tardy 6 times, absent 0 and had taken 3 hours off.

Another memorandum presumably by Stenberg dated December 13, 1964, stated:

> Today, John Brown was reprimanded for his chronic tardiness. He was told his record of repeated tardiness and leaving the plant early was unsatisfactory. Unless he could improve, he probably would be terminated.

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[20] Although Brown's supervisor Burchett was called as a witness by Respondent no questions were asked him regarding Brown whatsoever.

[21] There is no indication by whom this reprimand was made. This memorandum together with the others herein referred to were read into the record by the General Counsel.

Another reprimand purportedly by his foreman, Carl Burchett was dated January 25, 1965:

> Carl Burchett informed John Brown because of his absence and tardiness, we will again point out to him his working hours was the same as all other employees, from 7 a.m. to 5 p.m., Monday through Friday, and 7 a.m. to 12 noon on Saturday. And he would be expected to be here on time and working at his place of work.
>
> Brown was told he must not leave early or leave his place of work, or to work any additional hours without the expressed permission and order of his supervisor.
>
> Brown was told his failure to comply with the company rules, regulations and policy would lead to his discharge.

The next reprimand was dated February 25, 1965:

> Today John Brown was again reprimanded for his failure to comply with previous reprimands concerning his tardiness. It was explained to him his record shows repeated lateness. In fact, in 1964, he was late a total of 17 days. And already, during the first two months of 1965, he had been tardy a total of 10 days.
>
> Brown was told instead if improving his record, when being reprimanded last February, he was getting worse. He was also told his place of work was the stockroom and he was to refrain from leaving the stockroom and going to any other part of the plant and from engaging employees, et Cetera.
>
> He was told this would be his last warning and the next time we had to call him to the office, about it, he would be terminated.

According to Brown's testimony during his first 8 years with Respondent he received 4 raises. He was then promoted to foreman in charge of some 10 people making power steering pumps for Massey-Ferguson. He received

a 20-cent raise at this time. He was in this job approximately 6 months when Svenson informed him that he could not handle men and that he was being transferred to the experimental work under Knute Levine. At this time he was given a 10-cent increase. After approximately a year and a half with Levine he was transferred to the machine-tool-hydraulic department under the supervision of Gillie Emerson. Levine had complained about Brown's reporting late a couple of times and had said that Brown made him "nervous". He apparently only worked a short time for Emerson when he was transferred to the stockroom (apparently with no reduction in wages) where he worked under Carl Burchette. This transfer was made about mid-1964 and he stayed on this job until his discharge about 9 months later.

Brown became active in the Machinists campaign and secured 10 to 15 authorization cards from his fellow employees for that Union. The part Brown played in promoting the union meeting at the UAW Hall on March 8 has been noted. Prior to this time, according to Brown's further undenied and credited testimony, unfair labor practice charges had been filed by the Union in connection with the burning of Brown's automobile while parked by his daughter in front of the home of an employee who was crossing a picket line in a labor dispute not involving Respondent. After it had happened Svenson had approached Brown at his work (on July 9, 1964), and told him that he was sorry that Brown's car had been burned but added that this was "what happens when you mess around with those hoodlums in the Union."

On July 23, Brown was called into the office by Stenberg who said that Svenson wanted to talk to him. Because it was a very hot day the three of them went back in the IBM machine part where it was air-conditioned. There, Svenson accused Brown of filing an unfair labor practice charge against Respondent. Brown denied the accusation. Svenson said he had the charge back on his desk. Brown reiterated that he had not filed it and after

some more conversation offered to give a statement to that effect. With that, Brown was dismissed. Later, Stenberg told Brown that he would write a letter for Brown to send to the labor board. A few days later he got the letter from Stenberg which read as follows: [22]

TO WHOM IT MAY CONCERN

I, John L. Brown, of 511 West Chester, Rockford, Ill., do hereby want all persons to know that I have had no connection with the International Association of Machinists, AFL-CIO, Lodge #1553 of Rockford, Ill.

I have not asked nor do I want an unfair labor practice charge to be filed in my behalf against the John S. Barnes Corporation, Rockford, Illinois.

I, also, want the IAM Lodge #1553 to retract any such papers that may have been filed and I do not want the IAM Lodge #1553 to use my name for any reason whatsoever.

JOHN L. BROWN

Brown never sent the letter because it encompassed a much broader statement than he had intended [23] and "would have been a lie" because at that time he already belonged to the union. Three or 4 days after Brown received the letter from Stenberg he gave a statement to a board agent about the car matter. The following day Brown took his copy of the statement and showed it to Stenberg. The latter asked Brown where he made the statement and Brown told him that it was at the Union Hall. Stenberg then asked Brown "how did they know how to get ahold of him." Brown answered that he had signed a union card and that he had been called from

[22] In his testimony Stenberg denied preparing the letter and denied that he had ever seen it prior to the hearing. I credit Brown.

[23] His intention was simply to say that he had not filed the charge in question and that he "would like verification from the labor board" that he had not filed it.

the Union Hall. Stenberg asked for a copy of Brown's statement but Brown refused to give it to him.

According to Brown's further credited testimony, shortly after the election on August 12, 1964 the Union distributed a handbill in the form of a cartoon depicting Svenson presumably in some sort of an uncomplementary light. The day after the handbill had been passed out Svenson came to Brown and thanked him for giving him "the valentine . . . last night."

As indicated, Brown was discharged on Tuesday, March 9, the day after the union meeting that he arranged was held at the UAW Hall. According to Brown's testimony, at about 11:30 that morning Burchett called and told him to come up to Stenberg's office. There, in the presence of Burchett Stenberg told Brown that he had seen him talking on Thursday, that he had taken it up "with the front office" and that it had been decided to discharge him. At this time Stenberg showed him a copy of a company rule against wandering in the plant signed by Svenson.[24] When Burchett took him down to check out his tool box he told Brown that the first he had learned about the matter was 5 minutes before it happened.

According to the undenied and credited testimony of employee James Carlisle, shortly after Brown's discharge Carlisle went to Stenberg's office and asked him why Brown had been discharged. Stenberg told Carlisle that "Brown had been fired for talking 20 minutes the previous week on a Thursday afternoon." Carlisle commented that he "thought it was kind of silly to fire a man on Tuesday for something he did last Thursday"

[24] According to Brown, who was corroborated by some of the General Counsels' other witnesses, the rule was first posted in the plant in April of 1964 and remained on the company's bulletin boards only a short time, having been taken down before the election. Brown didn't see it again until it was shown to him on the occasion of his discharge. According to other witnesses it was again posted some weeks after Brown was discharged.

and asked Stenberg "if he was sure he hadn't fired him for union activities." Stenberg "more or less indicated" that it was none of Carlisle's business but added that "this was a good way as any to get rid of Brown."

According to Brown's testimony, his work in the stockroom required him to deliver parts to the shipping room twice a day. Besides this, Brown "also went out and rigged castings for the fellows on the line, . . . pressed bronze bushings . . . and if they were short of a part, (he) had to go out either to the grinder sometimes and to the inspection department or to the mills and different places and pick this part up and bring it to the assembly." He admittedly talked briefly with his fellow employees on these occasions. He also admitted that he did not get his foreman's permission each time he left his department as provided for in the rule because his foreman was seldom available. According to Brown, he was never criticized for his failure to comply with this rule until he was discharged. He specifically denied receiving a reprimand from Burchett on January 25 and a reprimand on February 25 for tardiness and for being away from the stockroom and talking in the shop.

Regarding the rule against wandering in the plant, several of the General Counsels' witnesses testified that it was not enforced or at best was very loosely enforced. Clyde Edwards, Claude Livingston Jr., Donald Kottkamp and James J. Carlisle testified to this effect. Carlisle testified that his work as a maintenance electrician took him all over the plant and that in the course of his work he had numerous conversations with employees. These conversations were about "religion, politics, various things" including the Union. He was opposed to the Union and always spoke against it. He spent up to a half hour on some of these discussions which some times included supervisors.[25] He had several such discussions

[25] Corroboration of this is shown in the testimony of Roy Schell, *infra*.

on politics and the Union with Brown from whom he was on opposite sides on both subjects. Neither he nor the employees with whom he talked (with the obvious exception of Brown) were ever criticized or reprimanded for such conduct.

Respondent introduced in evidence excerpts from an employee handbook put out by W. F. and John Barnes and Associated Companies (with which Respondent was once connected) which dated back 20 years or more and listed various plant rules. This was introduced as showing a background for Respondent's published rules. To establish that it had published rules, Respondent introduced in evidence copies of rules dated November 22, 1960, December 7, 1962, June 11, 1963, October 8, 1964, and November 19, 1965, pertaining to absenteeism. The earliest exhibit involving a prohibition against leaving one's work station however was dated April 1, 1964. This rule provided as follows:

> ATTENTION ALL EMPLOYEES
>
> You are again reminded that that is the Company's Policy during working hours you are to remain at your place of work. you must *not* leave your place of work or department except in the line of duty or with the permission of your foreman.
>
> If you leave your place of work or department, you are expected to accomplish your mission promptly and not to visit, distract, or interfere with other workers.
>
> Your cooperation is respectfully requested.
>
> JOHN S. BARNES CORPORATION
>
> /s/ ERNEST J. SVENSON
> President

Respondent also introduced in evidence a number of written reprimands to various employees to show that it did indeed enforce its rules. Of the 10 reprimands re-

ceived in evidence all are dated after March 9, 1965 except two and only one of these two (which was dated April 17, 1964) pertained to being away from one's work station talking to other employees.

Conclusions as to Brown's discharge

Notwithstanding that a superficial perusal of the record might lend some support to Respondent's contention that Brown was discharged for cause without any intervening antiunion motivation, I am convinced and find that Brown's union activities played a significant part in his discharge and that it was discriminatory within the meaning of Section 8(a)(3) of the Act.

In reaching this conclusion I am first impressed with the patently false claim of Stenberg that he was unaware of any union activity by Brown until the start of the instant hearing.[26] Next is the abruptness of the discharge coming as it did the morning after the union meeting (which merited Stenberg's surveillance and apparent surprise)[27] and without any investigation on Stenberg's part whatsoever regarding the purported conduct that gave rise to it.

It would appear that while Brown may have had some shortcomings as an employee, he was highly enough regarded by Respondent to be retained and rewarded in

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[26] In this connection to be noted among other things are: (1) Svenson's accusation in July 1964 that Brown had filed unfair labor practice charges. (2) Brown's information to Stenberg, while discussing his having given a statement to the Board, that he had signed a union card. (3) Strickland's information to Stenberg on March 3 regarding Brown's attempt to get the employees to go to the UAW meeting that night. (4) Stenberg's surveillance of that meeting.

[27] That the UAW meeting of March 8 must have come as somewhat of a shock to Stenberg would appear from his comment to Roskopp a few days after the meeting (as will appear in more detail below) that things had appeared to be quieting down until the March 8 meeting took place.

spite of any deficiencies he may have had—up to about the time the Union arrived on the scene. Then, after Brown had joined the Union, his shortcomings (described in general terms by Svenson as being "difficult to control" and a refusal "to be governed by the company rules and regulations") give rise to several conversations about him between Svenson and Plant Manager Stenberg. According to their testimony there followed several reprimands to Brown regarding his failure to comply with company rules. These are all evidenced by representation made in memoranda to the files by Stenberg stating that such reprimands have been communicated to Brown. In his testimony Brown denied receiving any of these reprimands. Whether or not he did[28] is immaterial in my view of the evidence since I would find that even if he had been reprimanded as claimed by Respondent and informed that his next violation of a company rule would result in his discharge, I would still find, as I do, that his discharge was in fact motivated by his union activity and that the triggering incident advanced by Respondent as its cause is without substance—and further that to the extent it might be deemed to have any substance it was nevertheless relied upon as pure pretext to mask Respondent's real antiunion motive.

Thus, I am convinced and find that to the extent that there was a rule against leaving one's work place and talking to other employees outside the scope of one's duties it was loosely and rarely enforced.[29] I credit the

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[28] Respondent's evidence here rests solely on the uncorroborated word of Stenberg whose doubtful credibility has already been discussed. The one opportunity to offer corroborating testimony regarding an alleged reprimand to Brown by his Supervisor Burchett was not taken advantage of by Respondent when Burchett was not interrogated about the matter.

[29] An example of the lack of seriousness with which Respondent viewed its rule appears in the undenied and credited testimony of Roy Schell. According to him about three weeks before the election Stenberg engaged him in a 45 minute discussion during working time wherein Stenberg gave Schell the benefit of his view on unions.

testimony to this effect by the General Counsel's witnesses, which was not countered by any evidence offered by the Respondent except the general statement to the contrary by Stenberg and Svenson. Indeed, what little corroborative type evidence Respondent offered in this connection tends to support my conclusion. Thus, of the several written reprimands offered in evidence regarding the breach of this rule only one was dated before his discharge and that was almost a year earlier. By the foregoing I do not mean to say that I do not believe that Respondent ever had in effect the rule in question. I do not doubt that it did. But, as often happens with rules, I believe as the evidence shows that it was more honored in its breach than in its observance. The event of Brown's discharge apparently gave rise to a tightening of the rule. But punishment for the breach of an unenforced rule in the circumstances here[30] is as specious a defense in my opinion as if there had been no rule involved at all. Moreover, I also credit the General Counsel's evidence which shows that the conduct complained about by Respondent occurred 5 days before the discharge took place. As observed by Carlisle, it seems "kind of silly to fire a man on Tuesday for something he did last Thursday." That is if it is not learned in the meantime that that man is trying to renew the employees' presumed waning interest in a union. Then, perhaps it is "as good a way as any to get rid of (him)."—or at least to try.

The increase in the hours of LaSala and Edwards

The part played by Sam LaSala and Clyde Edwards together with Roskopp and Brown in arranging the UAW meeting on March 8, their attendance at that meeting, the information Stenberg had been supplied about it by Strickland and Stenberg's surveillance of the

[30] The disparity of the treatment of Carlisle, an antiunion employee, is an example.

meeting have been noted. From these circumstances plus the various confrontations between the two employees and Svenson as shown I find that Respondent on March 9 was fully aware of their union support and activities and was not particularly happy about it.

For a period of 4 or 5 years LaSala and Edwards had been working together from 7 a.m. to 4:30 p.m. in the assembly department on "special order and breakdown jobs" under the supervision of Eric Johnson. During this entire period the regular shift hours for the rest of the plant were from 7 a.m. to 5 p.m. Apparently others in the plant had also been working the shorter shift. At some undisclosed date prior to March 9, Johnson had told LaSala and Edwards that the other employees were going to start working until 5 p.m. and that they could do so too if they "wanted to." The two elected not to do so and Johnson said "that it was alright." This is not denied by Johnson in his testimony.

On the same day that Brown was discharged, March 9, 1965, (which was also the day that Stenberg had called employee Sam Huckabee into his office and told him that he could name to Huckabee every employee who had attended the union meeting the night before) Stenberg called LaSala and Edwards into his office. There, according to the testimony of LaSala (corroborated substantially by that of Edwards) Stenberg accused the two of taking timecards of other employees out of the rack and looking at them.[31] Stenberg said that these cards were not to be touched by anyone except the individuals whose names they bore. Stenberg then pointed out that Respondent's hours were from 7 a.m. to 5 p.m. and that from that date on the two employees would be working those hours. LaSala told Stenberg that they had been working until 4:30 for the past 4 or 5 years. Edwards

[31] According to Edwards' testimony he said to Stenberg, "I challenge that statement because it isn't true," and asked Stenberg who had given him such information.

asked if they would be discharged if they refused to work the extra half hour. Stenberg said that they would be. Edwards asked upon whose authority the order came and Stenberg replied that it was on authority of E. J. Svenson, President of John S. Barnes. Then Edwards said that having covered the pleasant subjects he wanted to talk about something else and asked for a raise. According to LaSala Stenberg replied that at that time "he was trying to get the newer help and the younger employees a raise first." Edward's version was that Stenberg replied "that he would rather go down on the floor and try to get a raise for any of the young fellows down there than try to get a raise for (him)." [32]

In his testimony Stenberg admitted that he had called the two employees into his office and had "informed them that they were to work until 5 p.m." According to Stenberg he had just previous to this learned on the basis of a survey he had made that some employees were not working the regular shift. He thought that it was wrong that everyone except a few "special people" had to work until 5 p.m. So, he "simply informed these people that due to increased business" they had to work the "standard work week." He then testified that his decision and order was in fact based upon the requirements of increased business. According to the testimony of both LaSala and Edwards, at this time the volume of work in their department was on the decline.

As in the case of Brown and essentially for the same reasons I believe that the facts here justify the finding that the increase in the hours of LaSala and Edwards was based essentially on antiunion considerations and I so find.

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[32] On the basis of this evidence the General Counsel contend that Edwards was discriminatorily refused a wage increase. I reject this contention.

## The Discharge of Roskopp

Roskopp's part with Brown, Edwards and LaSala in promoting and attending the meeting at the UAW Hall on March 8 has been noted. He went to the meeting with Edwards and LaSala the three riding to it in Roskopp's car. According to Roskopp's testimony, on March 12, Svenson came to his work station and asked if he was keeping "his nose clean." Roskopp said, "yes." Svenson "turned around and turned around again" and looked at Roskopp's and said "that is not what I hear."

The following day Roskopp went to see Stenberg wanting to know what Stenberg had heard about Svenson's comment. Stenberg said he could not enlighten Roskopp. They thereupon upon engaged in a conversation. Stenberg said something about either he or Roskopp "should not do this" but that Roskopp was in the office on his own so Stenberg asked him what the employees wanted. Roskopp told him "they wanted better wages and better insurance." Stenberg said that management was working on these things and that "as soon as things quieted down about the union,. they would see what they could do to . . ." Then he went on to say, "it seems like things have been quieting down and now it is picking up again because we met at the UAW Hall." Stenberg commented that he did not know if Roskopp had been at the UAW Hall. Roskopp said that he had been there. Stenberg said that everytime he went downstairs (presumably into the plant) he felt as if the people were stabbing him in the back or were engaging in a slow-down. Thereafter for a few weeks on occasion Stenberg would greet Roskopp with such comments as "good morning, you fat slob" or "how are you doing you old bastard." [33]

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[33] This testimony was corroborated by employee Larry Bain who claimed that he also hear Stenberg address Roskopp or refer to him as "lard ass." On cross-examination Roskopp testified that he did not know on such occasions "whether it was a friendly greeting or not," but claimed that Stenberg spoke with "a rough voice."

On May 3, according to Roskopp's further testimony, he told his supervisor, Howard Olsen, that he had 2 weeks vacation coming and wanted to know if he could "take a couple of days off here and there" and take a full week off in July. Olsen said he would like to have Roskopp do it that way but told him to get Eric Johnson's permission. Roskopp then spoke to Johnson telling him that he would like to have the 7th, 8th, and 9th of May off with the understanding that he could have a few days more at the end of May. Johnson said that it "would be fine."

When Roskopp returned to work on May 10 according to his further testimony Stenberg asked him how his vacation had been and Roskopp answered that it had been fine. Either that same day or the next Roskopp told Stenberg that he would like to have the end of May off and wanted to know if he would lose his holiday pay because he would not be there the day before but would be there the day after the holiday. Stenberg told Roskopp to get Johnson's permission and have it turned into the payroll department as part of his vacation. This Roskopp did and Johnson said "it would be alright with him, he would turn it in."

On May 7 or 8, according to Roskopp's testimony on the basis of a leading question posed to him by counsel, he had a conversation with Svenson at his work station.[34] Svenson again wanted to know if Roskopp was keeping his nose clean. Roskopp replied that he didn't know.

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[34] It was counsel who suggested the date of May 7 or 8 in his question. Obviously Roskopp could not have had a conversation with Svenson at the plant on that date because he had been on leave at that time. Apparently counsel misspoke because in a later question about other events which took place later in the same week that he had the above conversation with Svenson counsel identified that week as being the week of May 17.

Svenson said, "well, you better. You have a wife and baby to feed." [35]

Later in the same week that he had had the conversation with Svenson (the week of May 17) Roskopp called Machinist business agent Stubblefield for the purpose of setting up a union meeting. This meeting took place around May 20 or 22. About 15 or 20 employees attended among whom were Roskopp, Edwards, LaSala and Huckabee. Some authorization cards were signed at the meeting and Roskopp and a couple of others took blank cards with them. Roskopp passed out about a half dozen of these cards in the plant the following Monday, May 24.

Late that afternoon according to Roskopp's further testimony Eric Johnson came to Roskopp and asked him if he was going to be gone that weekend. Roskopp said "yes," that he was going to be gone Thursday through Monday and would be back to work on Tuesday. Stenberg, standing nearby, overheard Roskopp's comment and said harshly, "No you are not." Roskopp said, "The hell I am not. You told me I could." Stenberg denied this. Roskopp contradicted him and reminded him of their previous conversation about the holiday pay. Stenberg then remembered but said he had told Roskopp to get Johnson's permission. At this point Johnson spoke up that he had given his permission. Stenberg said, "I am changing it, I am getting tired of you-------[36] taking off part of the middle of the week and calling it part of your vacation." Stenberg added that if Roskopp did not come in on Thursday he could "forget to come in Tuesday"—that he "would be fired." Roskopp said, "well

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[35] The Roskopp's had had a baby a few months before this. In an affidavit that Roskopp gave about the matter he said that Svenson had said on this occasion "remember you will have to work twice as hard now, you have a wife and baby to feed."

[36] Instead of using the exact word used by Stenberg here Roskopp had described it with the words "blankety blank" and testified that the word in question involved a four letter sex word.

if I am fired I will see you in front of the National Labor Relations Board." Roskopp also testified, "I cursed at him and he cursed at me."[37] Then Stenberg turned and walked away. When asked who had cursed first Roskopp replied, "I don't remember," but testified that they had both used profanity.

When Roskopp reported for work the next day he was asked to see Stenberg in the latter's office. There Roskopp asked Stenberg if he "was fired." Stenberg said no but that he was going to send Roskopp home for the day for discipline—that he would not stand for Roskopp's "cursing him or threatening him the way (he) did."[38] As he was leaving, Stenberg called him back and asked him what he was going to do about his vacation. Roskopp said that Stenberg had told him he could not take off and so he assumed he would have to work. Stenberg told Roskopp to report back to work on Wednesday.

When Roskopp reported on Wednesday there was a note in the card rack that he was to report to Stenberg. In the office Roskopp asked if he was fired and Stenberg said, "yes." Roskopp asked Stenberg on what grounds—whether it was his work. Stenberg said that it was not, his work had been good or he would not have been there as long as he had been and stated that the reason was misconduct. Roskopp asked what he meant by misconduct and Stenberg said, "threatening and cursing."

Several of the General Counsels' witnesses testified that both Svenson and Stenberg on occasion used profanity in their conversations with employees. According to Clyde Edwards' testimony he heard both Svenson and

[37] While admitting that he had used profanity Roskopp claimed he could not remember what he had said.

[38] On cross-examination Roskopp testified that at this time Stenberg explained to him that the only reason that he could not have the time off he wanted was because it was the end of the month, a busy time. Roskopp asked Stenberg why he hadn't made the explanation to him the night before.

Stenberg on numerous occasions using words he "could describe . . . as four letter words meaning sex, also . . . everything that could be imagined . . ." Edwards also testified that with "every remark" by Eric Johnson "there is profanity included."

Regarding Roskopp's discharge Stenberg testified as follows: Shortly before 5 p.m. on May 24, Roskopp walked up and "butted . . . into" a conversation that Stenberg was having with Eric Johnson. Roskopp said, "I am starting my vacation Thursday." Stenberg spoke up, "Eric we don't start vacations in the middle of the week. You know our vacation policy." Then he turned to Roskopp and said, "you know this is the end of the month, we need every person we can get in here to work on the material to get it out, we have a lot to go and there is a holiday coming up. Wait until next week and take your vacation starting Monday." Roskopp, becoming "rather loud, said he would not wait, that he had already made plans and he was going to go Thursday." At this point there was "some pretty ulgar and vile language" used by Roskopp. Johnson walked away "and a lot of other employees in the same area were milling around, getting ready to go home." Stenberg said, "We will discuss this further in the morning" and also walked away.

According to Stenberg's further testimony, when he got to his office he thought he ought to call Svenson about the incident because he did not thing that Roskopp's "wild and vulgar language . . . was quite right." He then called Svenson at the latter's office but Svenson had already left for home so he waited a while and reached Svenson at his home. In the ensuing conversation it was agreed that they would suspend Roskopp "at least for the next day" and discuss the matter more fully then. Stenberg went back to the plant that evening and left a note for Eric Johnson that Roskopp was not to punch in the next day, "that (Stenberg) would talk to him."

The next day Stenberg informed Roskopp that he was being suspended for 1 day pending a final determination regarding the matter. That noon Stenberg lunched with Svenson at the Faust Hotel as was his custom. There they "discussed Peter Roskopp pretty much in detail." After reviewing the incident and the "vile and vulgar language used by Roskopp" Svenson was satisfied that Roskopp should be terminated "for insubordination or misconduct." Accordingly, Svenson suggested that Stenberg "write up the details of what had taken place" between him and Roskopp and also the results of this meeting with Svenson about it. Stenberg said he would not do this in the plant but would do it at home because he did not want his secretary "writing this language." That night at home Stenberg wrote out the memorandum.

The memorandum revealed, among other things, that

1. At the time that Roskopp "butted in" to Stenberg's conversation with Johnson, Stenberg had just "found that all available manpower . . . including added overtime" was needed to meet the month's shipping schedule.

2. Three times, after initially telling Roskopp that he could not take off because of the press of business, Stenberg repeated his explanation to Roskopp (in the face of the latter's growing anger and abuse[39]) and in substance pleaded with Roskopp each time to wait until the end of the week to take leave.

3. That at this point Roskopp loudly and vulgarly said, "You mother ------,[40] you will be in court over this. I will take this to the NLRB, you dumb son of a bitch."

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[39] According to the statement Roskopp had angerily said, "Do you people think you are God and can tell people what to do? Why you are worse than Svenson."

[40] This word also involved a four letter sex word.

4. Stenberg walked away from Roskopp at this point in order "to maintain dignity and character and good morale in connection with other Barnes employees."

5. A complete investigation of the matter was made including Roskopp's conduct during his employment at Barnes . . . "

On the following day Stenberg discharged Roskopp telling him that he did not like to discharge people but that he "really had no recourse because of his action the day before.

In his testimony Stenberg admitted that he may use "a curse word now and then" but claimed that he did not "make a habit of going around cursing or using dirty language" in his speech. He specifically denied that he ever used a four letter sex word if it was the one he thought his interrogator had reference to. When asked if he had used porfanity in the incident with Roskopp he testified, "Well, to the best of my knowledge, I don't really think that I used any profanity in the conversation." Elsewhere in his testimony he referred to the incident as "our argument."

I credit Roskopp's version of this incident. In addition to Stenberg's thoroughly demonstrated lack of credibility generally, the repititive moderation with which he would have it believed that he met Roskopp's angry assertions would be most unrealistic no matter how even tempered a supervisor might be. I find that Roskopp had cleared and arranged his vacation matter through Stenberg and Johnson as he had been told to do. I further find that on May 24, Stenberg had preemptorily countermanded these arrangements and in doing so had referred to Roskopp with an expression involving a well known (certainly in factory circles) four letter sex word. There is no doubt in my mind and I also find that Roskopp returned the compliment to Stenberg with interest, as it were, using the language set forth in Stenberg's memorandum about the matter.

The General Counsel would attribute much significance in the resolution of this matter to certain conflicts between Svenson's and Stenberg's testimony as to the details and chronology in its handling up to the time that Roskopp was discharged. Aside from the bearing such conflicts have on the general veracity of the two company witnesses, I do not believe that there is any importance in them as regards Roskopp's discharge.

I have found that Roskopp used the language attributed to him. Respondent maintains that this was what he was discharged for. The General Counsel contends that the reason advanced by Respondent was a pretext utilized to cover Respondent's antiunion motive. I agree.

There is no question in my mind, and I find, that the use of profanity including words involving sex was common place among Respondent's employees including Stenberg. Having initiated the use of such language in his harsh repudiation of his prior authorization to Roskopp, he can hardly claim an insult to his sensibilities or his dignity when Roskopp returned it to him in kind. And in this light, even less persuasive is his stated concern for the "dignity and character and good morale in connection with Barnes employees."

Considering the record as a whole, including Roskopp's admission to Stenberg that he had attended the March 8 UAW meeting and Svenson's comment shortly thereafter implying that Roskopp was not keeping his "nose clean," his attendance at the Machinists meeting about May 22, his activity on behalf of the Union shortly before his discharge, the intense opposition of Respondent to the Union and the wholesale unfair labor practices committed by Respondent in its callous attempt to defeat the rights and lawful purposes of its employees, I am convinced and find that Roskopp's discharge, like that of Brown and like the discrimination against LaSala and Edwards, was motivated by Roskopp's support of the Union and that the reason advanced by Respondent for the discharge was a pretext to hide this real motive.

The Refusal to Bargain

As indicated, the Union's organizing campaign began in February, 1964. On May 19, 1964, the Union wrote Respondent claiming to represent a "majority of the factory employees" and requesting recognition. On May 26, 1964, the Union filed a petition for an election in a unit described as

> All production and maintenance employees of the Employer's plant located at 2241 20th Street, Rockford, Illinois, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

In the Regional Director's Decision and Direction of Election dated June 29, 1964, it is indicated that the unit was stipulated by the parties to be

> All production and maintenance employees at Employer's plant located at Odin Industrial Plaza, Rockford, Illinois, including plant clerical employees, leadmen, tool crib attendants, time keepers, working foreman, set-up men, shipping and receiving clerks, inside truckers, outside truckers, stockroom attendants, janitors and service men; excluding all office clerical employees, professional employees, guards and all supervisors as defined in the Act.[41]

The Union lost the election on August 12, 1964, and filed timely objections which were combined with unfair labor practice charges and set for hearing on December 17, 1964. At that time the General Counsel withdrew the refusal to bargain allegations of the complaint having determined that the Union did not represent a majority at the time recognition had been demanded. There-

[41] This is the description of the unit contained in the current complaint, which is admitted by Respondent to be an appropriate unit. As will be seen, certain of the above-named categories are found herein to be supervisors within the meaning of the Act and are thus excluded from the unit that I find to be appropriate and which is involved in the recommended order herein.

upon, the remaining unfair labor practice charges were settled without going to hearing. Notwithstanding the settlement, the Union continued its organizing efforts.[42]

On June 1, 1965, the Union wrote Respondent advising that "a majority of the production and maintenance employees of the John S. Barnes Corporation wish to be represented by Lodge 1553, International Association of Machinists, for the purpose of collective bargaining," and sought the commencement of negotiations for a collective-bargaining agreement. The letter was admitted to have been received on June 2. On June 3 the Company wrote the Union in part as follows:

> We know and believe that you *do not* represent a majority of the production and maintenance employees of this Company and therefore any negotiations would be highly improper. (Emphasis in original.)

For the purpose of determining the number of people who were in the bargaining unit as of June 2, 1965 (the date Respondent received the Union's demand for recognition) the General Counsel offered a copy of Respondent's IBM record of its payroll ending June 5, 1965. This record shows for our purposes the names and clock numbers of all hourly paid employees who earned any wages during the payroll period ending June 5. Two hundred and forty-three people are listed on this exhibit. Of these it was stipulated that six were office employees, not in the unit, and that ten had been hired after June 2[43] and of course would not enter into calculations pertaining to majority as of June 2. Elimi-

[42] According to employee Strickland's undenied and credited testimony, authorization cards were being given out in the plant from January until another demand for recognition was made on June 1, 1965.

[43] Actually the stipulation involved only nine such employees but the evidence shows that there was one other, L. D. Cline, who applied on June 3 and started working on June 4.

nating this 16 leaves a base figure of 227. There is a conflict however between the General Counsel and Respondent as to the use of this figure as a base. Besides a few individual differences two main categories are at issue. The General Counsel contends (contrary to Respondent) that some 23 or 24 employees whose names appear on the June 5 payroll record are supervisors within the meaning of the Act and should be deleted from the base. He also contends that 10 others on the payroll were student employees whose interests and sporadic continuity of employment precluded their inclusion in the unit. Respondent not only opposes this contention, but in addition to including them in the unit would also include 13 additional students who, while not having worked during the payroll period in question, it contends were carried on its records as permanent employees at that time.

In the disposition of this matter let us turn first to the question of

The Student Employees

For some years Respondent has engaged in a policy and practice of hiring students [44] and letting them work at all times when in a vacation or recess status from their studies such as summer vacations, Easter and Christmas recesses and between semesters. The students are given permanent clock numbers at the time of hire,

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[44] In its brief Respondent (apparently to accentuate its point that "these 'school-boys' are not hired as summer vacation replacements, or as temporary employees . . . (but) as permanent employees") states that "whenever any employee wishes to further his education, and can afford to, that Company permits them to attend school and work whenever they can." I am sure Respondent accords this privilege to any of its employees who desire to take advantage of it. Nonetheless, it would appear that most of the so-called student employees are hired with the understanding that they intend to pursue their studies and are identified in the Company's records as students from the start.

enjoy all the employee benefits when earned[45] and are carried on the Company's records as permanent employees until they voluntarily terminate their employment relationship.

Respondent introduced into evidence a listing of the names, clock numbers and dates of employment and school attendance of 26-student employees some of whom had been with Respondent as long as 2 or 3 years. Ten of these were working on June 2, 1965, and appear on the IBM payroll for that crucial date. Respondent contends that all of this 26 except 3 who were hired after June 2 should be included in the unit and figure in the majority computation of June 2.

The General Counsel opposes this contention and would eliminate even the students who were working on June 2 on the grounds that there has been no showing of a reasonable expectancy of permanent employment by these employees and on the basis of "the intermittent, irregular and indefinite nature of their employment." In this connection the General Counsel stresses the fact that the Respondent could show no college graduates permanently employed in the bargaining unit.[46] Conversely, Respondent thinks it significant that at least three of its former students are currently employed by it in executive or professional capacities. Indeed, as stated by Svenson on

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[45] Thus they are entitled to paid holidays, insurance benefits and to participate in the Company's wage dividend plan after completing the standard 90-day probationary period and after they meet the other day-to-day requirements for such benefits. However, with respect to the insurance program since it is a contributory plan few if any participate. As for vacations which require a full year of employment to be eligible, Respondent points out that it would "obviously take 4 to 5 years to accumulate a full work year." Even so, Respondent claims that one of its "school boys" employee received such a vacation in the past year. This involved an employee who worked full time in addition to attending school.

[46] The one so named by Respondent had actually attended college for only 2 years.

the witness stand regarding Respondent's hiring of students "... that is the way we train people for executive jobs."

In a number of cases the Board has excluded student employees from bargaining units on the grounds that they had no reasonable expectancy of eventual permanent employment and because of the intermittent, irregular and indefinite nature of their employment. *Brown-Forman Distillers Corporation*, 118 NLRB 454; *George Groh and Sons*, 141 NLRB 931, 938-939; *Central Mutual Telephone Company, Inc.*, 116 NLRB 1663, 1667; *Dixie Wax Paper Company*, 117 NLRB 548, 551; *Belcher Towing Company*, 122 NLRB 1019; *Oscar Ewing, Inc.*, 124 NLRB 941; *Thompson, Weinman and Company and Paga Mining Company*, 125 NLRB 301; *N.L.R.B.* v. *Joclin Manufacturing Company*, 314 F. 2d 627. In some of these cases the students were hired as replacements of vacationing permanent employees and in some the student employees were not eligible for various employee benefits. Since neither of these two circumstances were true of student employees question here, Respondent contends that these cases are not authority for excluding the student employees from the unit. I disagree. I do not believe that either one of these factors has any significant bearing on the main thrust of these decisions. Surely, there is no reasonable expectancy here of eventual permanent employment in the unit.[47] And the irregular, indefinite and intermittent nature of the employment is also obvious. I do not believe that either one of the differentiating factors relied on here by Re-

[47] If nothing else, Svenson's own testimony that the students are being trained for executive jobs shows this. And this also provides another reason why this category should be excluded. From Svenson's testimony it would appear that these jobs should be considered as trainee positions for jobs outside the unit. Such trainees are customarily excluded from production and maintenance units. *Baltimore Transit Co.*, 92 NLRB 1260; *The Maller Company, Ltd.*, 98 NLRB 937; *Cherokee Textile Mills, Inc.*, 117 NLRB 350.

spondent are of sufficient importance to affect the basic rule of these cases. Accordingly, I shall not include the student employees whose names appeared on the June 5 payroll in my computation of the base.[48] This leaves a base figure so far of 219.

## The Supervisors

In their brief the General Counsel name 24 employees who they contend are supervisors[49] and analyze the evidence about their status in support of their contentions. Of these Respondent through its president, Svenson, named six as working foremen,[50] eight as leadmen,[51] and three as setup men.[52] According to Respondent none of the people it named as working foremen, leadmen or setup men, nor those claimed by the General Counsel to be supervisors, were in fact supervisors within the mean-

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[48] The names and clock numbers of those students are Bassett 2695, Brophy 2464, Buckingham 2183, Dasenbrook 2198, Korink 2184, Peterson 2197, Zeller 2175, and Lonergan 2463. Two other employees who were listed as students and whose names appear on the June 5 payroll I will include in the unit and the base computation. These are J. N. Hall 2236 and T. W. Kennedy 2174. As of June 2, 1965, Kennedy had been working steadily just short of a year and Hall for about 9 months. In view of the length and continuity of their employment they must be accorded the status of permanent employees regardless of their student classification.

[49] The clock number and names of the individuals in question are C. Carlson 2990, A. Carr 2763, M. Christianson 2753, M. Clark 2904, J. Donar 2912, G. Emerson 2847, G. Fletcher 2785, P. Guetschow 2923, M. Johnson 2710, M. La Sala, 2933, V. Leatherman 2794, K. Levine, R. Linnard 2960, D. Longnecker 2730, D. Maynard 2735, T. Mcbride 2802, L. Meyers 2854, D. Nelson 2909, H. Olson 2940, G. Peterson 2989, H. Smith 2736, G. Smuck 2757, F. Svhreck 2878, and A. Tegner 2756.

[50] Dale Longnecker, Howard Olson, Douglas Nelson, Axel Tegner, Phil Guetschow, and Ray Lennard.

[51] Mark Christianson, Myron Clark, Adney Carr, Gilbert Emerson, Mike LaSala, Vic Leatherman, Frank Schreck, and Hubert Smith. Also named by Svenson as a leadman was Wally Johnson.

[52] Marvin Johnson, Donald Maynard, and James Doner.

ing of the Act. Before attempting to analyze the evidence in detail on this matter, certain broad aspects of it should first be noted.

1. According to Stenberg, Respondent had only four supervisors for its day shift which at the time in question would have involved somewhere between 230 and 270 people.[53] Those he named were Frank Dergins, chief inspector; Carl Burchett, in charge of machine tool hydraulic assembly; Hervy Arrick, general superintendent of the machine shop; and Eric Johnson, who was described by Svenson as "Superintendent over assembly." Stenberg also named as an additional supervisor Clarence Carlson who was in charge of the night shift. Added to these as a supervisor is Darold Small who Svenson also named as a supervisor in his testimony.

On the basis of the foregoing, Respondent would have it believed that at the most six people (two of whom have the status of superintendents) have had responsibility for the direct supervision of a machine tool manufacturing force as high as 270 people. This is a very unlikely ratio of supervisors to rank-and-file employees. *The Ohio Power Company*, 80 NLRB 1334 at 1339-40; *Wonderknit Corporation*, 123 NLRB 53 at 55.

2. Several witnesses including some called by the Respondent testified that shortly before Respondent made the move to the new plant site at Odin Plaza, there was posted at at least one place in the old plant[54] a list of Respondent's then supervisory employees. There is no question in my mind that such was the fact and I so find. Neither Stenberg nor Svenson specifically denied that such a list had been posted but they testified that if there had been such a list in existence or posted they

[53] Svenson testified that Respondent's employment varied between these figures.

[54] Some of the witnesses testified that the list had been posted at two different locations.

were unaware of it and knew nothing whatsoever about it. Considering the close control Svenson held over the entire operation, I do not believe their testimony.

Some of those named by the various witnesses as having been on the list or lists [55] in question during 1963 and the early part of 1964 were Howard Olson, Dale Longnecker, Mark Christianson, Douglas Nelson, Phil Guetschow, Axle Tegner, Marvin Johnson, Adney Carr, Donald Maynard, Ray Linnard, Myron Clark, Tom McBride, and Knute Levine. As can be seen from this group all those who Svenson named as working foremen, three he named as leadmen and two he named as setup men were held out to the employees by Respondent in early 1964 (just before the Union started its campaign) to be supervisors. While Respondent would have it believed that the move to the new plant resulted in changes that would nullify or make obsolete any representations appearing on the "list" in question, it appears from Svenson's testimony that the duties of working foremen and leadmen remained "substantially the same" at the new plant as they had been in the old plant. Moreover, the evidence shows that the duties of those in each category involve no substantial differences between their individual incumbents.

3. As noted heretofore in my discussion of Stenberg's credibility, notwithstanding Respondent's position in its brief and Stenberg's position on the witness stand that working foremen were not supervisors, in his written sworn statement Stenberg said, "Both Phil Guetschow and Howard Olson are supervisors. I personally so informed them . . . they are part of management and so is Eric Johnson." And in his explanation regarding the discharge of McVay, Stenberg further stated "Another reason was his wandering in the plant. *I'm sure his foreman, Howard Olson, reprimanded him for this many*

[55] Hereafter I shall sometimes refer to this list of named supervisors simply as the "list."

*times. We have a discipline system and Howard Olson could have disciplined McVay for it.*" (Emphasis supplied.) As will be recalled a similar admission occurred in Svenson's sworn statement which also conflicts with Svenson's oral testimony and Respondent's position here.

Several witnesses called by the General Counsel testified as to the various duties of people they described as Respondent's supervisors. Naming the individuals, these witnesses (often illustrating with specific examples) showed that those they named were in charge of varying numbers of employees ranging up to 70; that they made work assignments to them; that they directed employees' work and transferred them from task to task; that they did little or no production work in comparison to the rank-and-file employees; that they "criticized" or reported to their superiors poor work of employees or a breach of conduct on their part; that they received and transmitted to higher authority employee requests for wage increases; that they granted employee requests for time off; that they "contacted" employees about working overtime; that they were introduced and held out to the employees as their foreman or supervisors and that the employees so looked to them; that they attended weekly production meetings with top supervision; and that their names appeared on the list of the supervisors which had been posted in the old plant.

This testimony was not a composite of the duties of working foremen, leadmen and setup men but applied generally to all three classifications. Practically every one of the above factors was attributed by the General Counsel's testimony to Marvin Johnson, designated by Respondent as a setup man, and to several of those designated by Respondent as working foreman or leadmen.

To counter the foregoing evidence, Respondent called as witnesses the people whose supervisory status is at issue. While on direct examination some may have denied exercising specific supervisory functions their testi-

mony considered as a whole and after cross-examination generally showed that the essentials of the General Counsel's evidence was accurate.[56] Thus, setup man Marvin Johnson testified that he attends the weekly production meetings where his opinion is voiced and considered in the discussion as to whether they "are going to make schedule or not." He attends these meetings because he is responsible for production in his group, which involves 12 to 14 employees.[57] He assigns work that has been given to him for assignment by the general superintendent of the machine shop, Hervy Arrick. In making assignments he has discretion to pass out the work based upon his knowledge of the varying abilities of those in his group. If faulty work by any of Johnson's group is discovered by the inspection people they inform Arrick about it who in turn will inform Johnson and together the two will investigate the matter. If Arrick is absent, the matter would be brought to Marvin Johnson's attention directly. He is "indirectly" responsible for the bad work of his group. Employees on occasion seek his intercession on behalf for wage increases. These he discusses with Arrick. If an employee should make a wage increase request directly to Arrick, as occasionally happens, the latter checks with Johnson about it and gets Johnson's opinion about the employee's work.

Respondent's contention as to the status of the working foremen, leadmen and setup men had been noted. Respondent's position is that whatever overseeing or directional functions anyone in the three foregoing categories exercises with respect to the employees is merely

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[56] It is clear from Respondent's evidence that of the three categories in question, setup men are considered to be the least significant in their relationship to the employees. Next in importance, are the leadmen who would generally be more experienced and older in service than the setup men but not as experienced and long of tenure as the working foremen.

[57] He named Abney Carr, Douglas Nelson and Don Maynard as having similar groups and duties as he.

routine and does not involve the kind of responsibility contemplated in the Act for supervisors. In this connection it is interesting to note that Stenberg flatly denied that any of the people in question have authority to direct the work of others or authority to make effective recommendations regarding them. To the contrary, Svenson testified that leadmen have to have ability to handle men which he described as "directing them and showing them how to work" and "getting the workers feeling friendly toward the leadmen" for the purpose of working "in unison and syncronization." According to Svenson a leadman has authority to report an idle man to his superior or he can order the man to "get going." As for the setup men, he approaches the men in a "friendly and confidential manner and tells them their weaknesses" but does not criticize them. According to Svenson, any criticism they might have of employees the setup men would convey not to the employees but to their superiors. Svenson also admitted that both working foremen and leadmen can grant time off to employees at least for short periods.

According to Respondent the weekly production meetings are for the purpose of scheduling production and give rise to the individual work assignments which in essence are then simply handed out by the employees who attend the meetings to the employees who do not attend them. The assignment, supervision and direction of the work itself is all practically automatic, according to Respondent, with what little authority is exercised by the categories in question coming directly (and without any intervening responsibility) from the five or six people Respondent contends are its only supervisors.

There is no doubt that Respondent has at all material times been run almost single handedly by Svenson and that the ultimate and almost exclusive power over the direction of the work, the hiring, the firing and the granting of raises is vested in Svenson. Nevertheless, it is clear to me from Respondent's prior action which listed

its supervisors, from the admissions Svenson has made[58] and from the record as a whole, that the working foreman, leadmen and set-up men at all times material have been supervisors within the meaning of the Act and I so find. Thus I find that all those named by Svenson as appears in footnotes *50*, *51*, and *52 supra* are supervisors. This eliminates another 18 from the base bringing the figure now down to 201.

In addition to those named by Respondent as being in the three categories in question (as appears above) there are seven others that the General Counsel would exclude from the bargaining unit as supervisors[59] and one they would exclude as an office clerical.[60] The evidence as to these is as follows:

Gerald Smuck

Several of the General Counsel's witnesses testified that Smuck was the supervisor in charge of maintenance work. Carlisle testified that he had been told by Stenberg that he would work for Smuck. According to Carlisle, Smuck told him what to do, when to do it and how. Two others worked with him under Smuck. Smuck on occasion criticized their work in front of other employees and assigned them from job to job.

Smuck's testimony shows that he has been with Respondent over 12 years, 10 of which have been in maintenance work. In this he works on everything—machines, electrical, compressors, sprinklers, and cooling. He has two or three others in the work with him who he shows what to do and how to do it. He testified that "In a

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[58] While Svenson also maintained that the categories in question had no authority to recommend wage increases he nevertheless testified that they could "recommend a review of wages for an individual."

[59] Gerald Smuck, Roy Linnard, George Fletcher, Loren Meyers, Tom McBride, Knute Levine and Garnier Peterson.

[60] Albert Ritchie.

manner of speaking" he is in charge of maintenance. He determines what tasks are to be given priority. If he is unable to so determine, he will go to Superintendent Arrick about it. He works along with the men. Besides doing this he has the duty of going outside and purchasing what supplies and parts are needed in the work. In this connection he has authority to make purchases without prior approval if they do not exceed a certain amount. No one else has such authority in the department except that when he is absent one of the other men can so act.

Although denying any authority regarding the granting of raises, he admitted that on one occasion he intervened with Stenberg regarding one of the men in his department to the extent of telling Stenberg that the man in question "was a good man." He did not know if the man got a raise. If his men want an hour or two off, he can and does approve it without prior authorization from anyone else. He will however, report such a matter to Arrick or Stenberg. If his men do bad work he will criticize them "to the extent it was wrong." If his department becomes to pressed with work he "might suggest" to Stenberg that they need outside help. In any event Stenberg generally knows, when such is the case.

Roy Linnard

Two employees testified that Roy Linnard was the foreman of the toolroom. Linnard told the toolroom employees what, when and where to do their work. He also assisted them if they were having difficulty with their work. Linnard was listed as a foreman or supervisor of the toolroom on the list of supervisors that was posted in the old plant.

There was nothing in Linnard's testimony to controvert the foregoing. It appears that Linnard was originally employed by Svenson as a foreman in charge of the toolroom. Just previously Linnard had been foreman for another employer. Linnard told Svenson that he

would accept the job only on the condition that he be permitted to work along with the men. He admitted that his name appeared on the list of supervisors as foreman.

George Fletcher

Fletcher was described by several employees as the foreman of the stockroom. According to the testimony of Englin, Fletcher mentioned to him that he had been made foreman of the stockroom at the new plant. Englin asked Supervisor Howard Olson if this were true, and Olson confirmed it. Fletcher assigns work to employees and instructs them how stock orders are to be filled. He occasionally reassigns employees from one job to another and criticizes improper work and requires that it be done over. On at least one occasion on being asked by an employee for a raise, Fletcher informed the employee that he would talk to Stenberg about it. The employee subsequently received the raise. Fletcher attends the same production meetings which are attended by the foremen in the assembly department.

In his testimony Fletcher admitted telling someone he was foreman but claims he did so to avoid being solicited by the Union. He admitted having been asked by Strickland for a raise and having passed on the request to his immediate superior, Darold Small, who sought Fletcher's opinion as to how Strickland was performing. He had also asked Svenson to hire two nephews of his which Svenson did. He admitted being called into the office during the summer of the election by Stenberg and given a list of his job duties. He did not deny that he also attends the weekly production meetings. He admitted that he criticizes the work of those in his department and gave as an example their carelessness in handling gears which resulted in damage to them and a complaint from Superintendent Eric Johnson to him about it.

Tom McBride

According to the General Counsel's evidence McBride is a foreman in the inspection department in charge of G.C. Pump Inspection. His duties are substantially the same as those of another supervisor in the inspection department, Myron Clark.[61] He directs the work of inspectors in the G.C. Pump Inspection and assigns work according to the various inspectors' experience. He trains new employees and points out mistakes to the inspectors. He approves time off for employees and was listed as a foreman on Respondent's list of supervisors.

In his testimony McBride who was called to testify by Respondent denied having any direct authority. He did testify that he had 21-years tenure with Respondent and admitted that he assigns work and uses discretion in determining who to give it to. He also admitted being classified as a foreman on the "list" which had been posted in the old plant and that his duties had not changed since that time.

Knute Levine

In his testimony John Brown, who worked under Levine, described Levine as general foreman in the experimental department at the plant. Brown received his work assignments from Levine who checked his work and pointed out mistakes to him. Levine approved requests from Brown for time off and also recommended Brown for wage increases on two different occasions. When Brown was transferred to the experimental department, Svenson advised him that he would be working under Levine. In early 1964, Levine complained to Brown about his tardiness. When Brown was transferred from Levine's department he was informed by Svenson that the transfer was at Levine's request. Levine was also listed on Respondent's list of supervisors.

[61] As will be recalled Clark was named by Svenson as a leadman.

Levine testified that he had been with Respondent 24 years, and that he is a serviceman. As such he goes out on customer-service calls. This he does about one-quarter of his time. The other three-quarters of his time he spends in the plant where he works in what is known as the model shop. There, machines are rebuilt and modified and new features tested. His only help in the model shop is one other employee who he described as a trainee. For 4 years he had John Brown work with him in this capacity. Then Brown's work "slipped" and got worse as time went on. So, feeling that Brown "wasn't being conscientious about his work," Levine asked Svenson to be relieved of Brown's assistance, which request Svenson complied with. Levine further testified that in his absence Superintendent Eric Johnson takes over his functions. Levine is on a salary basis in his job and owns stock in the Company. He did not deny that he was named as a supervisor on "the list."

Loren Meyers

According to the General Counsel's witnesses Meyers is foreman of the shipping department. He was made foreman at about the same time as Fletcher was made a foreman. According to Englin's testimony he learned of Meyer's promotion from Eric Johnson. Meyers directs the work of other employees in the department and is the one to whom other people in the plant bring their orders for shipping. Meyers' duties involve a large amount of paper work with bills of lading.

Meyers, who has been with Respondent 16 years, testified that he was the shipping clerk. Darold Small "in production" is in charge of the shipping department. According to his testimony Meyers packages material, writes bills of lading and railway express tickets and keeps records on what is shipped and what supplies are needed. He assists on occasion in loading and unloading. He tells others in the department what to do if some

priority matter comes up and he is too busy to handle it himself. He "criticizes" the work of those in the shipping department if it is wrong and shows them how it should be done. At the time of his testimony there was only one other besides himself working in the shipping department but sometimes there are as many as four working there.

Garnier Peterson

According to the witnesses Englin and Sam Huckabee, Peterson was a foreman in the gear department of the machine shop for many years. He attended the same production meetings as the other foremen in the machine shop. At the old plant, he had a desk in Respondent's office. According to Huckabee, Peterson was his foreman until sometime after the election in August 1964, at which time he was transferred to a lay-out table where he lays out work for the drill press machines.

Albert Ritchie

In the old plant Ritchie had a desk in the office with Eric Johnson, Frank Dergin and Harvey Arrick. When the move to the new plant was made Ritchie's desk was put in the stockroom on his own initiative according to his testimony. According to the General Counsel's witnesses, Ritchie attends the same production meetings as Johnson and the assembly department foremen and he "supervised" the moving of the stockroom from the old plant to the new. His work is entirely clerical. Ritchie's undenied and credited testimony shows that his work is chiefly concerned with the listing of stock shortages as reflected in various jobs specifications and with requisitions for replacement parts. He does not punch a time-clock as do other production employees.

On the basis of the foregoing evidence I find that Smuck, Linnard, Fletcher, McBride and Levine are supervisors within the meaning of the Act. I reject, however, the General Counsel's contentions that Meyers and Peterson are supervisors. I do not believe that Meyers'

direction of his fellow worker or workers is of the same caliber of responsibility as that of the ones I have found to be supervisors. In addition, unlike most of the others, he neither attended production meetings nor was he on the "list" of supervisors. As for Peterson, regardless what his status may have been at one time, it would appear that as of June 2, 1965 his work was that of a layout man and so far as the record shows he works in this capacity all by himself. He could hardly be called a supervisor on this basis. Of the five foregoing employees that I find to be supervisors only three, Smuck, Linnard and McBride, appeared on the June 5 payroll. Their elimination reduces the base figure now to 198.

In my opinion Ritchie is a plant clerical not an office clerical and as such must be included in the unit. I so find. His duties are all connected with and directed toward the production function. While it may be that he also attends production meetings attended by supervisors his clerical involvement in the production function would justify his presents at these meetings as a clerk and not a supervisor.

Respondent claims that there were six employees whose names do not appear on the June 5 payroll record because of various excused absences and that they should be included in the unit roster.[62] In this connection the evidence shows that D. J. Hanson, clock no. 2310, was employed from October 26, 1964 to December 3, 1965. During the week of June 5 he was on leave engaging in Naval Reserve duty. Charles L. Smith, clock no. 2926, and Thomas Staples, clock no. 2323, were both on excused leave during the week of June 5. I find that these three employees clearly should be included in the unit roster. These, added to the previous figure of 198, now show a total of 201.

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[62] The names and clock numbers of these six are D. J. Hanson 2310, Charles L. Smith 2926, Thomas Staples 2373, Oscar Lindstrand, G. Beauchamp 2297 and G. Fletcher 2785.

According to Stenberg's testimony, Oscar Lindstrand was recuperating from surgery between March 20 and July 9, 1965. This he was doing under the Company's group insurance policy. During this time or shortly before, he had reached a decision to retire because he apparently had passed the Social Security retirement age. Accordingly, he was separated officially by the Company on July 9, 1965.[63] Although Lindstrand was apparently carried on the company payroll technically as of June 2, 1965 since he had been off long before that and never did return to work, I am of the opinion he should not be included in the unit roster and I so find.

As in the case of Lindstrand, I find that G. Beauchamp, clock no. 2297, should not be included in the unit for essentially the same reasons as Lindstrand was not included. According to Stenberg's testimony, Beauchamp was hospitalized from the period of April 16 to June 7, 1965. He was terminated by Respondent on June 7, 1965, "several days" after his wife had come in and informed the Company that Beaucham "would not be returning." Stenberg was unable to say the exact number of days it was that Beauchamp was terminated after the Company learned he was not returning.

Another employee that Respondent contends should be included in the unit roster is George Fletcher, clock no. 2785, who was absent during the week of June 5 due to illness. Since I have found that George Fletcher is a supervisor within the meaning of the Act, I find that he should not be included in the unit.

One other person who was listed on the June 5 payroll I find should not be included in the unit. This employee was Craig Carlson, clock no. 2245, whose last day of work was June 1, 1965. He resigned on that day to accept employment elsewhere and his separation paper is

[63] Previously Stenberg had testified that July 9 was the last day that Lindstrand had worked.

dated June 2, 1965. A union authorization card was signed by Carlson and is in evidence as General Counsel's Exhibit No. A-18. His elimination brings the base figure now down to 200.

According to Stenberg's further testimony, Gregory Ellison failed to report for work just before the Memorial Day holiday in 1965.[64] According to Stenberg, "after the second day" of his absence, his father called the Company and stated that Respondent "could assume he was no longer an employee." It was not until June 3 or 4 that his termination papers finally "caught up with the termination. . . ." Since he was technically on the payroll as of June 2, the General Counsel would include him in the unit.[65] As in the case of Lindstrand, I feel that since Ellison left the Company's employment prior to June 2 and never returned he should not be included in the unit roster. I so find.

In support of its claim of majority representation as of June 2, 1965, 119 authorization cards were offered and received in evidence through the testimony of the Local's business representative, Guy Stubblefield and Grand Lodge representative, Kenneth W. Black. Their testimony shows that in May of 1964, Stubblefield had sent Black 96 cards together with a list of the 96 signers. Black in turn sent the cards and the list of signers to the Regional Office of the Board in support of the RC petition. The receipt of 96 cards was acknowledged by the Board office on May 26, 1964. In June of 1965, (June 8 specifically) Stubblefield sent Black 122 cards and a list of the signers showing their addresses and telephone

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[64] May 30 fell on a Sunday; accordingly, the holiday was observed on Monday, May 31.

[65] Ellison's inclusion in the unit would be germane considering the fact that he signed an authorization card which the General Counsel would have counted in determining the question of majority.

numbers.[66] In his letter of June 8 to Black, Stubblefield indicated that "in addition to those persons listed, there are seventeen employees who signed the cards in last years drive who are still employed with the Company." This batch of 122 cards Black also sent to the Board office with a list of the signers—this time in support of an 8(a)(5) charge. Receipt of this 122 cards was acknowledged by the Regional Office on June 11, 1965. According to Black, the 119 cards in question were all taken from those which he had received from Stubblefield in the two batches described above. He explained that some of the cards from these two batches had been eliminated and were not included in the 119 because the signers were no longer employed by Respondent. Admittedly, neither of the union representatives saw any of the cards in question signed nor could they authenticate any of the signatures or dates on them.

At the time the 119 cards were offered in evidence (which was on November 5, 1965, early in the hearing) the General Counsel indicated on the record that he had no objections to Respondent's "taking these cards and comparing them with any records (Respondent) may have" including W-4 forms and cancelled pay checks which had been subpoened and were on hand in the hearing room. This suggestion was repeated to Respondent before the close of the hearing which occurred on January 13, 1966, after two intervening recesses totaling almost 2 months. At no time during the hearing did Respondent take any action regarding these cards other than to object to their receipt in evidence on the ground

[66] According to Stubblefield's testimony, blank cards had been attached to handbills on numerous handbilling occasions and had been given to key union supporters for solicitation purposes. Signed cards were mailed to the Union, turned in by key supporters, and handed in at the company gates all during the period from February 1964, to June 1, 1965. Both on direct and cross-examination, however, Stubblefield insisted that no cards were received by him after June 1, 1965. As will be shown later, several of the cards in question bear dates after June 1, 1965.

that they had not been properly identified. Notwithstanding the objection the cards were received on the basis of the foregoing evidence, the General Counsel contending that their validity had been *prima facie* established within the rational of *I. Taitel & Sons*, 119 NLRB 91[illegible] and *Hunter Engineering*, 104 NLRB 16 which cases were enforced by the 7th and 8th circuits respectively. I agree. See also *Northwest Engineering Company*, 158 NLRB No. 48.

In its brief the Respondent raises objections to the counting of various cards for the purpose of the majority computation. Thus, as has been shown, Respondent would eliminate the cards of the two alleged discriminatees, Brown and Roskopp on the grounds that they were not employed on the date of demand. My disposition of those matters disposes of this contention.

Respondent would also eliminate all cards dated June 1, 1965, and later on the grounds that these could not have been in the hands of the Union at the time it made its request for recognition. As for the June 1 cards[67] it is clear that they could have been in the Union's hands at the time the June 1 demand was written and may well have been the motivation that triggered the Union's decision to request recognition on that date. Accordingly, I shall count the June 1 cards except that of Burle Jones whose card was postmarked June 3, 1965.

I shall not count the cards dated June 2,[68] however, because Stubblefield testified that he received no cards

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[67] The General Counsel's Exhibit No. and the names of the signers are: A-6 Harry Armbruster, A-12 Otto Biderbost, A-39 Olin L. Halle, A-45 James Hillmer, A-46 Betty C. Hollon, A-52 Burle Jones, A-56 David Kiel, A-57 James King, Jr., A-62 Bob Lace, A-67 Mabel S. McCall, A-94 Charles W. Shelby, A-97 Donna Ann Spencer, A-104 Thomas W. Strickland, A-113 Arthur Wemmer, and A-115 Bernard L. White.

[68] The General Counsel's Exhibit No. and names of the signers are: A-3 James Alverson, A-25 William C. Cross, A-70 Joe H. Morgan, and A-114 Milburn West.

after he wrote Respondent on June 1 requesting recognition. Nor will I count the two cards dated June 4, 1965. These were General Counsel's Exhibit No. A-61 signed by Thomas L. Kruse and General Counsel's Exhibit No. A-90 signed by Mary Schmaling. However, two other cards which had been signed by these two employees were received in evidence, General Counsel's Exhibit No. 24 signed on April 1, 1964, by Kruse and General Counsel's Exhibit No. 25 signed on April 2, 1964, by Schmaling. These two cards I will count in my computation of the majority for the reasons that will appear in my disposition of Respondent's "stale cards" contention next to be considered.

## Stale Cards

Among the 119 cards offered in evidence to prove the Union's majority (in addition to the Kruse and Schmaling cards just mentioned) were 10 cards dated on various dates between February 25 and June 1, 1964,[69] which Respondent claims are "stale" cards from a prior campaign and not valid or usable to prove the extent of union support in a subsequent campaign. In this connection Respondent apparently attaches great significance to the two organizing drives made by the Union and to various comments made by the union officials and the General Counsel regarding them. Thus Respondent points out that the 1964 cards "were used to support the representation petition which resulted in the election on August 12, 1964—in which the Union did not receive a majority vote," [70] and were used also to support at that

[69] The General Counsel's Exhibit No. and names of the signers are as follows: A-118 James E. Wolfram, A-117 Rodney Wolf, A-112 Elmer Clifford Walker, A-106 Thomas William Swinbank, A-101 Gerald Bryan Strait, A-87 Albert Ruskavage, A-34 Harry Gillette, A-29 Gerald W. DeVries, A-11 John L. Brown and A-79 Darwin Peterson.

[70] Respondent neglected to point out that the objections filed by the Union to the conduct of that election are still outstanding and are an issue in his proceeding.

time a refusal to bargain claim which was later withdrawn because of a lack of majority at the time the demand for recognition was made. According to Respondent this 1964 " 'campaign' was completely separate from (the) 1965 organizational drive" and the authorization cards obtained in the 1964 " 'campaign' cannot evidence employee interest in the present new (1965) case. They are stale."

Attempting to show that this was the position of the General Counsel, Respondent quotes from his opening statement in reference to the 1964 campaign as follows:

> At that time the machinists commenced an organizational campaign at Respondent's company. *This campaign continued until a demand was made in the latter part of May, 1964,* which demand was refused. Then a petition was filed, an RC petition, and there was an election held. This election, it was lost by the Union, and objections were filed * as were charges alleging 8(a)(1), (3) and (5) violations ** and this *employee list was checked, and upon checking it counsel for the General Counsel determined there was no majority* and counsel for the General Counsel then asked that the 8(a)(5) charge be withdrawn.* Now the Union again on June 1, (1965) made a *new* demand. So, we have here again another 8(a)(5) charge.* (Emphasis in original.)

In this same connection Respondent quotes Business Agent Stubblefield's reference in his June 8, 1965, letter to Grand Lodge Representative Black about "last year's drive." And to further show that "the Union (also) knew that the 1964 'campaign' was completely separate from its 1965 organizational drive" Respondent points to the testimony of Thomas Pixler who identified his undated card (General Counsel's Exhibit No. A-80) as having been signed by him on May 13, 1965. He also admitted having signed an authorization card prior to the August 1964 election. When asked why he had signed a card in 1965 when he had already signed one in 1964 he testified,

"Well, I don't know. They came around and said they had to have these signed again. I don't know. They said the other cards were no good, invalid, or whatever you call it." Respondent also points to the fact that 28 cards dated after February 1965 bear the same employee names as were listed on the Union's 1964 list of signers submitted to the Board. This shows, says Respondents, that "The Union knew the 1964 cards were stale and they tried to cover them" by reaffirmation.

As authority to support its "stale cards" contention Respondent relies on *Grand Union Co.*, 122 NLRB 589. That case is distinguishable on its facts. There, employees who signed authorization cards in an unsuccessful organizing campaign in 1955 testified that they did not want the Union to represent them in a subsequent campaign in 1956 and did not sign other authorization cards until a union security clause was executed. Here there was no such affirmative disavowal by the employees of their union support and commitment.

This case is more like *Knickerbocker Plastic Co., Inc.*, 104 NLRB 514, relied upon by the General Counsel to support his contention that the 1964 cards received in evidence should be considered valid authorizations for the purpose of establishing that the Union represented a majority of the employees when it demanded recognition on June 2, 1965. In that case an organizing campaign started in mid-1950 and resulted in a Board-conducted election in early September 1950 which the Union lost. Objections to the election were filed and on January 31, 1951, a hearing was ordered by the Board on the objections. In the meantime, unfair labor practice charges had been filed against the Company and a complaint was issued in January 1951 which was consolidated with the objections hearing. The consolidated hearing took place in April 1951, the Trial Examiner's Intermediate Report was issued in May and the Board's decision was issued October 2, 1951, substantially upholding the Trial Exam-

iner's finding of unfair labor practices on the part of the Company and setting aside the election.

No organizational activity took place from the time of the election in September 1950 until January or February 1951 when the Union again began soliciting authorization cards from the employees. On March 21, 1951, the Union sought recognition which request the Company refused to honor. This refusal among other things resulted in additional unfair labor practice charges by the Union which culminated in the issuance on December 29, 1951, of another complaint against the Company and the ultimate finding by the Trial Examiner and the Board of a refusal to bargain (among other violations) against the Company. In the findings regarding the refusal to bargain some 238 authorization cards which had been signed in the second or 1951 organizing drive were used in determining whether the Union represented a majority along with some 13 cards which had been signed in the first or 1950 organizing drive. These latter cards were found by the Trial Examiner and the Board to be "reasonably current cards signed in support of (the) machinists during the *same* organizational campaign and properly receivable in evidence . . .," (emphasis in original).

Regardless what legal significance or lack thereof in 1965 the Union here may have attributed to the 1964 authorizations it had obtained I find that here as in the Knickerbocker case the Union's 1965 organizing efforts were simply a continuation of its 1964 organizing campaign which had been interrupted by Respondent's unfair labor practices. Accordingly I shall accept the 1964 cards as valid authorizations and include them in my computation of the majority.

Having found that the 1964 cards are valid authorizations I shall also accept the cards to which the Respondent objects on the basis that no year is shown in their dates but only the month and day of their execu-

tion.[71] I note that eight of these cards bear the Board's intake stamp of June 10, 1965. Apart from this, however, it is clear from the overall record that the cards in question were solicited and received in either the 1964 drive or the 1965 drive. Since none are dated later than May 29, they are all valid whether they were received in 1964 or 1965 on the basis of my conclusions regarding Respondent's "stale cards" contention.

Respondent also objects to two cards which are undated. These are General Counsel's Exhibit A-68 signed by James Miller and A-80 signed by Thomas Pixler. Since Pixler testified, as shown, that he signed his card on May 13, 1965, I shall accept it. Miller's card, however, having no date on it whatsoever and no Board stamp that might show it was obtained before June 2, 1965, I shall reject.

Slightly over half of the 119 cards in question here show the Board's intake stamp which indicates the date and time of day that they were received by the Board. Some 53 of the cards, however, do not show such a record. Respondent apparently would disqualify these cards on this basis. While the Board intake stamp may add some support to the authenticity of the date of any given card, I do not believe that the absence of such a stamping, under the particular circumstances here, is a fatal defect to such identification.[72] Accordingly I reject Respondent's contention.

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[71] The General Counsel's Exhibit numbers , the names of the signers and the dates as written on the cards are as follows: A-10 James Richard Beck May 29, A-22 Earl Lee Clark May 27, A-24 William H. Covert May 28, A-35 Andrew Goodman May 28, A-53 Perley Kennedy April 10, A-50 Jack Huckabee May 27, A1-10 Donald R. Vanderheyder May 26, A-66 Robert Long May 28, A-84 Walter Reuber May 25. Another card was included in this group A-32 that of Gregory C. Ellison. His card of course will not be counted since I found that he quit Respondent's employment prior to June 2, 1965.

[72] The signers of all 53 cards in question are listed on one or the other of the lists submitted to the Board by the Union together with the cards on either June 9, 1965 or May 26, 1964.

From the foregoing it is seen that I have eliminated 10 of the 119 cards originally relied upon by the General Counsel to prove the Union's majority.[73] But I have accepted the two cards signed by Kruse and Schmaling in 1964, in place of those they signed in 1965. The result is that I have 111 cards which I find were valid union authorizations as of June 2, the date the Union's demand for recognition was received by Respondent. Since I have found that there were 202 employees in the bargaining unit at that time, it is clear that at the time of its request the Union represented a majority of the employees and I so find.

As a final defense to the refusal to bargain charges here, Respondent maintains that even if it be found that the Union represented a majority of the employees at the time it requested recognition, the refusal on the Company's part to recognize the Union cannot be assessed against it as a violation of Section 8(a)(5) of the Act for the reason that Respondent entertained a good-faith doubt at that time that the Union represented a majority of the employees. I reject this contention. Whatever persuasiveness or lack of it Respondent's explanations and arguments in this connection[74] might have had under

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[73] The General Counsel's Exhibit numbers . and names of those eliminated are A-52, Burle Jones, A-3 James Alverson, A-25 William C. Cross, A-70 Joeh Morgan, A-114 Milburn West, A-90 Mary Schmaling, A-61 Thomas L. Kruse, A-32 Gregory C. Ellison, A-68 James Miller, A-18 Craig Carlson.

[74] Among the reasons Svenson gave as support of his good-faith doubt was the Union's loss of the election in 1964 and the fact that the Union also lost an election in 1950; his own knowledge of "what a worker will do in connection with signing a card and what he will do : . . when it comes to placing the vote in a ballot box"; his having "glanced at some law reports and at least one speech by Frank McCullock, chairman, National Labor Relations Board" pinpointing "the idea that it is not the number of cards the men send to the Union . . . (but) what they do at the election"; newspaper articles "about Unions losing . . . membership"; and the better working conditions and pay that the employees were receiving.

different circumstances, such a claim in the context of Respondent's repudiation of the settlement agreement and its continuous and sustained illegal conduct clearly shows a rejection of the principle of collective bargaining. *N.L.R.B.* v. *Joy Silk Mills, Inc.*, 185 F. 2d 732. And even if it could be said that Respondent's initial reaction to the Union's demand was a good-faith doubt of majority, which I do not believe,[75] I am of the opinion that its conduct precludes it from relying on this as a defense. Cf. *Gruber's Food Center, Inc.*, 159 NLRB No. 49. As the court recently observed in *Movie Star, Inc., et al.*, C.A. 5, May 24, 1966, "The effect of Respondent's numerous Section 8(a)(1) violations was to transform a possible good-faith doubt of the Union's majority into a bad-faith virtual certainty." On the basis of the foregoing and the record as a whole I find that Respondent's refusal to recognize the Union on and after June 2, 1965, was a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

## IV. The effect of the unfair labor practices upon commerce

The unfair labor practices of Respondent set forth above, occurring in connection with the operations of Respondent described in section I, have a, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. Remedy

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (3) and (5)

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[75] On cross-examination, Svenson admitted that he had no idea how many people had signed cards and that he "didn't care how many cards . . . had (been) signed up"—that his only concern was for "the ballot box."

of the Act, I shall recommend that it cease and desist, therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent discriminated against employees Roskopp and Brown by discharging them and against employees LaSala and Edwards by increasing their hours of work. I will recommend that Respondent be ordered to reinstate Roskopp and Brown to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges and make them whole for any loss of earnings they may have suffered because of the discrimination against them, by payment to them of a sum of money equal to the amount of wages they would have earned from the date of the discrimination to the date of the offer of reinstatement together with interest thereon at the rate of 6 percent per annum, and that the loss of pay and interest be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 and *Isis Plumbing & Heating Co.*, 138 NLRB 716, to which the parties are expressly referred. I shall also recommend that Respondent be ordered to reduce the work hours of LaSala and Edwards, if those employees are willing, to the level that they had been before they were discriminatorily increased by Respondent.

Having also found that the Respondent refused to bargain collectively with the Union, as the majority representative of its employees in an appropriate unit, I shall recommend that the Company be ordered to cease and desist therefrom and upon request to bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment, and embody in a signed contract any agreement so reached.

The unfair labor practices committed by Respondent here strike at the heart of the rights guaranteed em-

ployees by Section 7 of the Act.[76] The inference is thus warranted that Respondent maintains an attitude of opposition to the purposes of the Act with respect to the protection of employee rights in general. It will, accordingly, be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.[77]

It is clear that there is sufficient evidence to set aside the election results of August 12, 1964. However, in view of my recommended order that Respondent be required to bargain with the Union, I shall recommend that the petition in case number 13-RC-10159 be dismissed and that the board vacate all proceedings therein. *Shelby Manufacturing Company*, 155 NLRB No. 39.

## Conclusions of Law

On the basis of the foregoing findings of facts and upon the entire record in this proceeding I make the following conclusions of law:

1. John S. Barnes Corporation at all times material herein has been an employer within the meaning of Section 2(2) of the Act.

2. Lodge No. 1553, International Association of Machinists, AFL-CIO, at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, as found above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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[76] *N.L.R.B.* v. *Entwistle Manufacturing Co.*, 120 F. 2d 532 (C.A. 4).

[77] *May Department* v. *N.L.R.B.*, 326 U.S. 376; *Bethlehem Steel Company* v. *N.L.R.B.*, 120 F. 2d 641.

4. By discriminating against its employees as found above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By failing and refusing to bargain with the Union on and after June 2, 1965, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. All production and maintenance employees at Respondent's plant located at Odin Industrial Plaza, Rockford, Illinois, including plant clerical employees, tool crib attendants, timekeepers, shipping and receiving clerks, outside truckers, stockroom attendants, janitors and servicemen; excluding all office clerical employees, professional employees, guards and all supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, Respondent, John S. Barnes Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with Lodge No. 1553 International Association of Machinists, AFL-CIO, as the exclusive representative of its employees in the above-described unit.

(b) Interrogating employees concerning their union membership, activities and desires.

(c) Promising or granting employees wage increases and other benefits or improvements in their terms or conditions of employment on condition that they refrain from becoming members of Lodge No. 1553, International Association of Machinists, AFL-CIO, or any other union.

(d) Keeping under surveillance the meeting places, meetings, and union or other concerted activities of employees.

(e) Creating the impression that they are keeping under surveillance the activities of Lodge No. 1553, International Association of Machinists, AFL-CIO, or the concerted activities of employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

(f) Restricting the movement of employees, or refusing to grant employees transfers, wage increases, and other benefits or improvements in their terms and conditions of employment because they engage in union or other protected or concerted activities.

(g) Threatening employees with loss of employment or other reprisals if they give any assistance to Lodge No. 1553, International Association of Machinists, AFL-CIO, or engage in other concerted activities.

(h) Promulgating and maintaining any plant rules prohibiting employees from supporting and soliciting for Lodge No. 1553, International Association of Machinists, AFL-CIO, only.

(i) Telling or advising employees that they should not cooperate with the Board or its agents.

(j) Discouraging membership in the above-named Union or any other labor organization by discriminatorily discharging employees, or in any other manner discriminating against them in regard to their hire or tenure of

employment or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act.

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named Union or other labor organizations, to bargain collectively to representatives of their own choosing, and to engage in any other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Upon request, meet and bargain collectively with Lodge No. 1553, International Association of Machinists, AFL-CIO, as the exclusive representative of all employees in the aforesaid appropriate unit, concerning rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, to Peter Roskopp and John Brown and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them by payment to each of them of a sum of money equal to what he would normally have earned as wages but for the discrimination against him less his net interim earnings, *Crossett Lumber Company*, 8 NLRB 440, 497-8, said backpay to be computed on a quarterly basis in the manner established in *F. W. Woolworth Co., supra.*

(c) Preserve, upon request, make available to the Board and its agents, for examination and coping all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining the amount of backpay due under the terms of the recommended order.

(d) Post at its plant in Rockford in the Odin Industrial Plaza, Rockford, Illinois, copies of the notice attached hereto and marked "Appendix." [78] Copies of said notice to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the Respondent's representatives be posted by Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Decision and Recommended Order, what steps Respondent has taken to comply herewith.[79]

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[78] If this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[79] In the event that this Recomended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

I also recommend that the petition in Case No. 13-RC-10159 be dismissed and that all proceedings in that case be vacated.

Dated at Washington, D. C.

/s/ Eugene E. Dixon
EUGENE E. DIXON
Trial Examiner

Form NLRB-4635A (11-65) TXD-494-66

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

(As Amended)

we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with LOCAL NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, as the exclusive representative of employees in the unit described below, concerning rates of pay, wages, hours of employment and other conditions of employment.

WE WILL NOT discourage membership in the above-named union or in any other labor organization; by discharging employees or discriminating against them in any other manner in regard to their hire or tenure of employment or any term or condition of employment except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

WE WILL NOT interrogate our employees concerning their union membership, activities and desires.

WE WILL NOT promise or grant to our employees wage increases and other benefits or improvements in their terms or conditions of employment on con-

dition that they refrain from supporting or becoming members of LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or any other union.

WE WILL NOT keep under surveillance the meeting places, meetings, and union or other concerted activities of our employees.

WE WILL NOT create the impression that we are keeping under surveillance the activities of LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or the concerted activities of our employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT restrict the movement of our employees, or refuse to grant our employees wage increases, and other benefits or improvements in their terms and conditions of employment because they engage in union or other protected or concerted activities.

WE WILL NOT threaten our employees with loss of employment or other reprisals if they give any assistance to LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, or engage in other concerted activities.

WE WILL NOT promulgate and maintain any plant rules prohibiting our employees from supporting and soliciting for LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, only.

WE WILL NOT tell or advise our employees that they should not cooperate with the National Labor Relations Board or its agents.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed to them in Section 7 of the Act, except to the extent that such rights may be affected

by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL cut back the hours of Sam LaSala and Clyde Edwards, if they so desire, to the hours they were working before they were discriminatorily changed by us.

WE WILL offer John Brown and Peter Roskopp immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of the discrimination against them, as provided in "The remedy" section of the Trial Examiner's Decision.

WE WILL bargain, upon request, with LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate bargaining unit with respect to rates of pay, wages, hours of employment and other terms and conditions of employment and we will embody any understanding reached in a signed agreement.

The appropriate bargaining unit is:

All production and maintenance employees located at Odin Industrial Plaza, Rockford, Illinois, including plant clerical employees, tool crib attendants, timekeepers, shipping and receiving clerks, outside truckers, stockroom attendants, janitors and servicemen; excluding all office clerical employees, professional employees, guards and all supervisors as defined in the Act.

All our employees are free to become, remain or refrain from becoming or remaining, members of the abovenamed union, except to the extent that such right may

be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

JOHN S. BARNES CORPORATION
(Employer)

Dated ..... By .....
(Representative) (Title)

NOTE: We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 881 U.S. Courthouse & Federal Office Building 219 S. Dearborn St., Chicago, Illinois 60604 (Tel. No. 353-7597).

TXD—463—67
Rockford, Ill.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Cases 13—CA—6407
13—CA—6637
13—CA—7049

JOHN S. BARNES CORPORATION

and

LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

Case 13—CA—7027

JOHN S. BARNES CORPORATION

and

JOHN L. BROWN, An Individual

Case 13—RC—10159

JOHN S. BARNES CORPORATION, EMPLOYER

and

LODGE NO. 1553, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

*Edward Maslanka, Esq.*, of Chicago, Ill., Counsel for the General Counsel.

*James S. Petrie* and *John P. Jacoby, Esq. (Vedder, Price, Kaufman and Kamholz)*, for the Respondent.

*Kenneth W. Black*, of Des Plaines, Ill., for the Charging Party.

## TRIAL EXAMINER'S SUPPLEMENTAL DECISION

### Statement of the Case

EUGENE E. DIXON, Trial Examiner: On August 26, 1966, I issued my Decision (TXD—494—66) in captioned matters finding *inter alia* that as of June 2, 1965, the Union represented a majority of Respondent's employees in an appropriate bargaining unit and that Respondent's refusal to then recognize the Union as the duly designated collective-bargaining agent of its employees violated Section 8(a)(5) of the Act.

On January 9, 1967, the Board issued an order reopening the record and remanding the proceeding for further hearing for the purpose of adducing evidence bearing on the question of the "authenticity of the signatures" on the authorization cards (General Counsel's Exhibits A 1 through A 119 excepting A 80)[1] which I had received in evidence under the rational of the *Taitel* case[2] and upon which I had based my finding that the Union represented a majority of the employees. The Board further ordered that upon the conclusion of such hearing, I issue a supplemental decision containing findings of fact as to the "authenticity of said union authorization cards," conclusions of law, and the recommendations.

At the outset of the hearing, Respondent indicated that it would not comply with the General Counsel's *subpoena duces tecum* pertaining to certain company records containing the signatures of employees whose alleged union authorization cards were the subject of the remand. Because of this refusal the General Counsel, in addition to offering the testimony of individual card signers and

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[1] The exhibit numbers of the cards will simply be prefixed with an abbreviation of the words General Counsel as G.C., as, for example, GC A 80, which incidentally was identified in the first.

[2] *I. Taitel & Son*, 119 NLRB 910, affd. 261 F.2d 1 (C.A. 7), cert. denied 359 U.S. 944.

others, introduced certain "secondary" evidence to take the place of the evidence sought under the subpenas. This material was received in evidence on the General Counsel's representation that it would be the base upon which he would offer the testimony of an expert witness to authenticate the signatures on various authorization cards.

Upon the entire record and from my observation of the witnesses, I make the following:

## Additional Findings of Fact

As found in my original decision, as of June 2, 1965, there were 202 employees in the bargaining unit which would require 102 valid authorizations to constitute a majority. Respondent contends that for various reasons as will appear, 68 of the 119 cards were not valid authorizations to the Union to act as the collective-bargaining agent of the employees. Respondent attacks the validity of these cards in groups or categories. The evidence as to these cards (but not necessarily in the groupings used by Respondent) follows:[3]

### A. *No Evidence as to Authenticity of Signatures*

#### 1. Joe Mullen (G.C. A 72)

Lester Kruse, called as a witness by the General Counsel, identified his own card (G.C. A 60). When asked on cross-examination if he remembered where he was when he signed his card, he answered:

> Yeah. Me and this Burt Mullen, he don't work at John S. Barnes, either, but we was down at my mother's hotel and we signed it. I gave it to Burt

[3] In all instances where the General Counsel offered proof of the cards by others than the actual signers or someone who saw the cards signed he established that the signers had failed to respond to subpenas or were otherwise unavailable. No specific attack on any card is made by Respondent on the basis of any lack of diligence by the General Counsel to get the proper witnesses.

and he mailed them. I believe that's how they went in.

Although he testified that Mullen had signed a card at the same time that he did, he "couldn't actually say" that he watched Mullen sign the card. He further testified that he did not look to see what Mullen did with the card. Kruse "just put (his card) down and filled it out and handed it to him and he says 'OK,' he was going to mail them." Although Kruse promised to provide letters he had received from Mullen for the purpose of comparing the signatures on them with the card in question, he did not do so. On recross-examination when it was suggested to him that he was "not absolutely sure that's Joe Mullen's signature, he answered, "No, I'd have to go get his letters and see his signature." Kruse's card was dated May 20, 1965. The Mullen card is dated May 24, 1965. I disagree with the General Counsel that the Mullen card has been sufficiently identified on the basis of the foregoing evidence to be included in the majority computation.

2. Bill Taylor (G.C. A 109)

No credible evidence was offered by the General Counsel to establish the validity of this card, the General Counsel in effect apparently maintaining that the card should be considered valid under the rule of the *Taitel* case. This card also will be excluded.

B. *Signatures Repudiated*

1. Rodney Wolf (G.C. A 117)

When the General Counsel learned that Wolf did not sign a card nor authorized anyone to sign for him, he withdrew the card from evidence.

2. Roger Couch (G.C. A 23)

Couch testified on direct that the card in question was signed by him and that all the other writing and printing

on it was his. He also testified that he read the card before he signed it. On cross-examination, after giving a sample of his signature and being shown it along with the card in question, he still maintained that the signature on the card was his. After being asked to furnish additional samples of his signature and being cross-examined further on the matter, he finally admitted that the signature on the card was not his. He nevertheless maintained that he did sign a card like the one in question. On redirect he was asked if he knew who put the signature on the card and he answered:

> A. I believe I do.
> Q. Who?
> A. Don the janitor.
> Q. Were you there?
> A. I told him; yes sir, I told him to put it on there but I did sign another one, too.

On recross he was unable to say why he did not sign the card himself. When asked on redirect when he had signed the other card, he testified that he was not sure but believed it to be after the date of the one in question, May 26, 1965. Don, the janitor, identified by the General Counsel in his brief as Donald Rarrieck, testified before Couch did at the call of the General Counsel but there is nothing in his testimony regarding the Couch card. Rarrieck was not called to the stand a second time. On this record I would eliminate the Couch card.

C. *Unreliably Identified by Nonexpert Witnesses*

Respondent objects to four cards whose signatures were identified by relatives or other nonexpert witnesses.

1. Norris O. Sanwick (G.C. A 89)

Irma Wales testified that she gets correspondence from Sanwick "continually" and has seen his signature many times. She testified that she recognized the signature on

G.C. A 89 and that it was the signature of Sanwick. On cross she testified that she had not seen the card in question until a few minutes before she took the witness stand. She also testified on cross that she was not a "handwriting expert" but added that she had a sample of Sanwick's signature with her "which anyone can see is the same thing." No one accepted her offer.

2. Roger Kessel (G.C. A 55)

Norma Kessel, Roger Kessel's mother, testified that she recognized the signature on G.C. A 55 and that the signature was that of her son Roger ". . . I'm pretty sure, it sure looks like it." She also testified that she was not a "handwriting expert" and that she could not recall seeing this particular signed card before.

3. Charles W. Shelby (G.C. A 94) and Don Shelby (G.C. A 94)

On direct testimony, Charlie A. Shelby, testified as follows:

Q. Mr. Shelby, I show you General Counsel's Exhibit Number 94 and ask you if you recognize the signature on the bottom of that where the name "Charles W. Shelby" appears?

A. Yes sir, that's my son.
Q. Did he ever work at John S. Barnes?
A. Yes sir.
Q. You say that's your son's signature?
A. Yes.
Q. I show you General Counsel's Exhibit Number 95 and ask you to look at the bottom there where it says "Don Shelby". Who's signature is that?
A. That's my brother's.
Q. Did he ever work at John S. Barnes?
A. Yes sir.
Q. Do you know where Don Shelby is?

A. Not at the present time, no.
Q. Do you know where Charles Shelby is?
A. I certainly don't.

On cross-examination Shelby testified that his brother had lived in Rockford about 10 years, but not with him and that there had been no occasion during this time for his brother to correspond with him. Asked upon what occasions during the previous 10 years he had seen his brother's signature he could cite only one occasion. This occurred the previous summer when they both had to sign an insurance report involving a car accident. At that time he did not "study" his brother's signature but just looked "to see if it was there."

The last time he saw his son's signature was about five or six weeks before the hearing when his son had given him a check to be cashed. On this occasion, he did not examine his son's signature but simply looked to see that he had endorsed the check. He could think of no other instances where he saw his son's signature.

Citing Wigmore, Respondent contends that in the above four instances the witnesses did not demonstrate that they had had enough opportunity to observe genuine specimens of the handwriting in question to be able to equate it with the card's signature. I agree with the Respondent only with respect to the card of Don Shelby (G.C. A 95) It might be argued that the identification of the card of Charles W. Shelby was little better than that of Don Shelby. However, not only had the witness seen the signature of Charles W. Shelby much more recently than that of Don Shelby, he also was the father of Charles W. Shelby. I think the difference is important. While the General Counsel's expert witness agreed generally with the statement of handwriting expert, Albert S. Osborne, that opinion testimony of lay witnesses regarding handwriting generally is "the weakest and most inconclusive testimony," I believe that there may be a distinction between the identification of a signature of

a person as distinguished from his handwriting in general. I also feel that generally more weight should be given the identification by a parent of his child's signature than that of a brother or a sister.

D. *Not Employed as of June 2, 1965*

In my original decision I deleted the cards of Craig Carlson (G.C. A 18) and of Gregory Ellison (G.C. A 32) on the basis that they were no longer employees as of June 2, 1965. I reiterate my findings and conclusions therein and delete these two cards from the current computation. In addition, I also reject the card of William Fluaitt (G.C. A 33) because it appears that he, too, could no longer be considered an employee as of June 2, 1965. In this connection, the evidence shows that on June 2 he applied for employment with the Admiral Corporation in Harvard, Illinois, and was hired on that date to begin working a few days later.

E. *Ambiguous Cards Signed in 1964*

Respondent would eliminate seven cards signed in 1964,[4] on the grounds that the "card language, coupled with the statements of solicitors that the purpose of signing cards was to obtain an election, precludes consideration of the cards as valid designations for the purposes of determining the Union's claimed majority status." The cards in question (not the same as used in the 1965 drive)[5] were approximately 8 inches long with a fold in

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[4] John L. Brown (G.C. A 11), Harry Gillette (G.C. A 34), Gerald W. DeVries (G.C. A 29), Albert Ruskavage (G.C. A 37), Gerald Strait (G.C. A 101), Thomas Swinband (G.C. A 106) and James Wolfram (G.C. A 118).

[5] The 1965 cards, in heavy block letters across the top began, "Yes I want the IAM." Beneath that the card read, in ordinary text type lettering as follows:

I, the undersigned, an employee of
(Company). . . . . hereby authorize the International Associ-

the middle and a return address on the bottom half of the reverse side. The text on the top half of the card read as follows:

CONFIDENTIAL
AUTHORIZATION
CARD

> In order that the National Labor Relations Board may conduct a secret ballot election, one-third of the employees must sign and return this card. If you care about your conditions, don't delay. Sign today.

CONFIDENTIAL

The text on the bottom half of the card, which was followed by space for signature, address, phone, employer, etc., read as follows:

> I hereby authorize the International Association of Machinists to represent me in collective bargaining on wages and working conditions. It is my understanding that I will be invited to join should the union be elected to represent me.

A composite of the testimony shows that the 1964 signers were told in substance, or understood, that "the purpose of signing" cards was to get an election, that there was general talk in the plant to this effect and that there was no indication that the cards would be used for the purpose of getting a union in the plant without an election. But nowhere does the evidence show that any of the signers in question were told that the *sole* or *only* purpose of the cards was to get an election. In the ab-

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ation of Machinists (IAM) to act as my collective bargaining agent with the company for wages, hours and working conditions. It is my understanding that I will be invited to join the IAM.

sence of such representation, I find that the foregoing cards [6] were valid authorizations.[7]

### F. *Not Mailed or Submitted to the Union Before June 2, 1965*

In my original decision in this matter I refused to include four cards dated June 2, 1965,[8] two cards dated June 4, 1965,[9] and one card dated June 1, but postmarked June 3.[10] The reason that I rejected these cards, as I indicated in my Decision, was "because Stubblefield [the union organizer] had testified that he received no cards after he wrote Respondent on June 1, requesting recognition." Obviously, the cards in question thus were not identified, even under the rule of the *Taitel* case, for receipt in evidence. Since this deficiency has been obviated by the evidence in the remanded hearing, I shall consider the matter notwithstanding Respondent's contention that "nothing in the record taken at the remand hearing compels a contrary result." In addition, Respondent contends that six other cards,[11] all dated June 1, should not be included in the majority computation on the grounds that they "were not turned over to the Union prior to the time

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[6] The card of Wolfram (G.C. A 110) included in the foregoing group will be separately treated below in another context.

[7] See *Winn-Dixie Stores, Inc., and Winn-Dixie Louisville, Inc.*, 143 NLRB 848; *Cumberland Shoe Corporation*, 144 NLRB 1268 (as modified by an unpublished order of the Board dated January 13, 1963, and thus affirmed 351 F.2d 917 (C.A. 6)); *American Cable Systems, Inc.*, 161 NLRB No. 28; *The Shelby Manufacturing Company*, 155 NLRB 464.

[8] James Alverson (G.C. A 3), William Cross, (G.C. A 25), Joe Morgan, (G.C. A 70), and Milburn West (G.C. A 114).

[9] Lester Kruse (G.C. A 60) and Mary Schmaling (G.C. A 90).

[10] Burl Jones (G.C. A 52).

[11] James Hillmer (G.C. A 45), Harry R. Armbruster (G.C. A 6), Olin Halle (G.C. A 39), Mabel McCall (G.C. A 37), Donna Spencer (G.C. A 97) and David Kiel (G.C. A 56).

its letter demanding recognition had been received by Respondent."

At the most, the evidence relied upon by Respondent here was to the effect that some of the signers in question did not mail or turn in their cards until the day after or even 2 days after they had signed them. In my opinion Respondent's position is too technical and rigid. As stated in *Retail Clerks International Association, AFL-CIO*, 153 NLRB 204, 226 (enfd. 336 F.2d 642, 647-648):

> There is no requirement in the Act regarding delivery of cards or any other delivery
>
> * * * *
>
> Perhaps if there was affirmative evidence that the card signer immediately tore up the card after he signed it or engaged in other contemporaneous conduct as to the card that might raise a question of whether he had in fact designated or selected the Union, we might feel obligated to pursue the matter.
>
> * * * *
>
> We are also of the opinion that, in the absence of affirmative evidence to the contrary, there is a presumption and an inference that a card signer who voluntarily signs a designation or authorization card intends to make a designation and to communicate timely that fact to the organization designated.

There is nothing in the record to raise the slightest presumption or inference in derogation of the designations here. And a delay in posting or delivering the cards of a day or two after signing is certainly reasonable and timely communication.[12] I therefore accept the cards in question with the exception of the cards of Thomas Kruse

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[12] Apart from normal procrastination, it is obvious that seldom would a signer who took a card home with him or who wanted the opportunity to consider it in private, be in a position to immediately mail it or transmit it to the proper recipient.

(G.C. A 61) and Mary Schmaling (G.C. A 90) which were dated June 4. The card of McCall (G.C. A 67) will be treated separately in another context below.

### G. *No Substantial Evidence to Show They Were Signed Before June 2*

#### 1. Walter Reuber (G.C. A 84)

On direct testimony Reuber (a current employee) identified his signature on the card but claimed that the rest of the card had been filled in by someone else. When asked whose writing the date was, he answered, "I'm not sure about that writing. No, that's not mine." He then admitted that the address and the telephone number were in his handwriting, testifying "I know 216 South 1st Street, the telephone number, Rockford, and all this [pointing]." [13] When he was then asked, "But you did not put a date on the card?" he answered, "No. I don't remember whether I did or not." He further testified that he had no recollection as to when he signed the card, but that he "mailed it right in" after he signed it.[14]

A cursory examination of the card would indicate that Reuber filled out the entire card himself. I do not believe that there is anything in this testimony that rebuts the presumption that it was signed on the date it bears.

#### 2. Albert Soetens (G.C. A 99) and Harriet Spencer (G.C. A 98)

On direct Albert Soetens (a current employee of 11 years' tenure) testified that he read and signed the card, but that Sam LaSala filled in the rear of it at his request and in his presence. He also testified that he had no idea when the card was signed.

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[13] Just what additional portion of the writing he pointed to was not reflected in the record.

[14] This card does not bear a postmark, so obviously was turned in by means other than by mailing.

Spencer testified that she read her card and signed it but that she did not know who dated it or when she had signed it. The dates on both of the above cards ("5-29-65") are written in different colored ink than the writing on the rest of the cards. The two dates also appear to me to have been written by the same person. I also agree with Respondent's statement that "a visual inspection of the card [Spencer's] suggests that it was dated by someone else." Clearly, the presumption that the cards were signed on the date they bear is rebutted by this evidence. Accordingly, I reject these two cards.

3. Darwin Peterson (G.C. A 79)

The identification of Peterson's card by his father (which is dated June 1, 1965), apparently is not attacked by Respondent.[15] However, the the father's testimony was that Peterson did not go to work for Respondent until after he had graduated from high school in 1965. Since there is no showing what the date of that graduation was, there is nothing to rebut the presumption that the card was signed on the date it bears.

4. Jack Huckabee (G.C. A 50)

Sam Huckabee identified his own card (G.C. A 49) which he signed on May 20, 1965. He also testified that he recognized the signature on G.C. A 50 as that of his son, Jack Huckabee, and that the rest of the writing on the card was his son's. The date on G.C. A 50 is "5-27" with no year indicated. The reverse side of the card shows that it was received by the Board at 12:18 p.m., 1965. I find this card to have been a valid authorization.

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[15] Received in evidence were several envelopes in which Peterson had sent letters to his parents from Vietnam containing his name written out in the return address. Also in evidence was an application signed by Peterson for an apprenticeship in a union. "A visual inspection" of these signatures indicates that they are the same as the signature on G.C. A 79.

H. *Authorizations Obtained by Misrepresentations*

There is no doubt, as contended by Respondent, that the thrust of the Union's campaign was centered on the idea that there was going to be another election and that employees were told when their authorizations were solicited that the purpose of the cards was to obtain enough so as to be able to get an election. It is also true that there is no evidence to show that anyone was told that the cards would be used to get union representation into the plant without an election. Nevertheless, it is also clear that, with the possible exception of one individual,[16] no one was told that the sole or only purpose of the cards was to get an election. *Cumberland Shoe Corporation, supra.*

Moreover, it would appear that, while the signers may have felt or understood that an election would be held, they viewed this merely as a necessary step toward bringing the Union into the plant and actually they signed the authorization cards because they wanted the Union to represent them, even if they also believed that an election would be necessary to obtain recognition and bargaining. This was revealed repeatedly on cross-examination when

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[16] Irma Paulson (G.C. A 78) testified that she got the card from a Dorothy DeGarmo who was acting as a union steward and that she "definitely" read it before she signed it. DeGarmo made no mention of an election when she gave Paulson the card but there "was . . . talk" that the Union would get into the plant "by a vote only." When Paulson was asked to "describe . . . the circumstances surrounding the signing of (her) card," she began to voice grievances involving pay inequities and increases. She was then asked if she was given any information about the card before she signed it and she testified "Oh, yes, some. I didn't need too much." She then explained, "I know what union means and I felt it would be more equal and more fair, there'd be more fairness in the shop for everyone, including myself." When asked what her understanding was of the effect of signing the card, she answered, "Well, there were hopes of getting a union in." It also appears that Paulson attended union meetings before she signed. Clearly, Paulson was not misled or coerced into signing for any reason other than the unambiguous one stated on the card itself.

Respondent's Counsel on the basis of an offer of proof [17] would ask the witness what his understanding was of the purpose of the cards and would get the answer that the purpose of the cards was to get the Union into the plant. Counsel would then ask the witness how this was to be accomplished and would generally get the answer that it would be accomplished by an election.[18]

Contrary to Respondent, I conclude and find that this evidence is not sufficient to vitiate the clear and unambiguous language on the cards authorizing the Union "to act as . . . collective bargaining agent with the Company for wages, hours and working conditions."

I. *Miscellaneous*

1. Perley Kennedy (G.C. A 53)

Kennedy got his card at a union meeting and had a fellow employee fill it out for him and date it. The card was not read to him and he is unable to read. When asked on direct if anyone had told him "what this card was for or did you know?" he answered, "Yeah, to get a union." On cross-examination he testified as follows:

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[17] At the outset of the hearing, I had ruled that I would take no testimony as to what the signers believed to be the purpose of the cards. However, I permitted Counsel to ask such questions as an offer of proof. I hereby reverse my rejection of the testimony so offered and consider it together with the other evidence.

[18] Examples of such testimony:

Dale G. Axelson, "To get a union representation in there and vote."

Gladys Ryder, "To get the Union in."

Donna Spencer, "That it would help to get the Union if there was a majority of the cards signed."

John Jackson, "To get a union in."

Robert Lace, ". . . to try to get a union in the shop."

Jack Hanson, "It was for the Union, sign it for the Union."

Walter Reuber, ". . . to get a union in the shop."

Edwin Laques, "To get union representation at the shop."

Q. Where did you get the card you signed in 1965?

A. I got it at the union hall.

Q. Was this in connection with a union meeting?

A. Yes, in '65 it was.

Q. At this meeting were union cards discussed?

A. Yeah.

Q. What was said about cards?

A. Well, to get the majority of the employees to get a union in.

Q. And how would you get the union in?

A. By getting a majority.

Q. Then what would occur?

A. Well, they'd set up an election.

Q. Was that discussed at the meeting?

A. Yeah.

Kennedy also signed a card in 1964 and voted in the 1964 election. In 1964 Union Representative Stubblefield had read the card to him.

In 1965 after he signed his card, he gave his son a card at home to sign. This the son did in his presence after reading the card "outloud." Kennedy left it up to his son to sign, telling him, "He could suit himself about voting for the Union." The son signed because "he wanted to vote for the Union." On this evidence I find that Kennedy's designation was a valid authorization to the Union.

2. Randall Carlson (G.C. A 20)

Carlson (a current employee) read his card before he signed it. About his signing he testified on cross as follows:

> . . . the way I understood it, they only needed about three or five more cards, is what I heard, to have, I'm not sure about just how many cards but they needed so many cards to have an election. If they

> got a majority or something, I don't remember all the details. So, I signed a card and gave it back to them.

This was not the first time they had asked him to sign, "they'd been after [him], many people throughout the shop" for several months. When asked why he finally signed, he testified, "Well, it was going to be a secret ballot, anyway, nobody was going to know and they needed so many now, that's the way I understood it. They only needed so many cards." He was then asked, "Mr. Carlson, would it be fair to say you signed a card to get these people off your back?" and he answered, "Yeah, I'd say so, to some degree." On this evidence I find that Carlson's authorization was a valid one.

### 3. Mabel McCall (G.C. A 67)

Dorothy DeGarmo testified that McCall had asked her for a card saying she would like to sign it and also borrowed DeGarmo's pen for that purpose. This occurred "at the foot of the stairs as you go up to the restroom." In the restroom, according to DeGarmo, she saw McCall sign the card although McCall did not know that DeGarmo was watching. About 20 minutes later, McCall returned the signed card to DeGarmo.

Although served with a subpena, McCall refused to appear on behalf of the General Counsel, but was called as a witness by Respondent—being the only employee to testify on behalf of Respondent in the hearing. McCall identified her signature on the card and testified that she thought "the date [June 1, 1965] is correct." [19] However, she denied getting the card from DeGarmo or returning it to her. According to her testimony, McCall received the card at her home from a man and woman who called on her late one afternoon after work. After

[19] The date was written "6/1/65." The "1" apparently had been marked over another number which appears to have been a "2." McCall could not recall having marked over the date.

thinking it over for sometime, she finally signed the card. Then 3 or 4 months later she mailed the card to the Union. From her further testimony it appears that it was before the election that the man and woman had called on her and left the card with her. It thus appears that McCall signed a card in the 1964 campaign. Although she claimed to have signed only one card for the Union, it is apparent that at best McCall was mistaken in her testimony. Accordingly, I credit DeGarmo's version and find that McCall's card was a valid authorization to the Union.

4. James Wolfram (G.C. A 118)

Wolfram signed one of the 1964 cards. It is dated "2-28-64." examination he testified as to his signing it and dating it. He also testified that he read the card before he signed it.

On cross-examination Wolfram testified as follows: that he had no "independent memory of when it was . . . signed . . ."; that he did not know who signed as witness; that he could not recall what he did with the card after he signed it; that he did not recall giving it to anyone after he signed it. At the suggestion of counsel, he agreed that it was possible that he "threw the card away" after he signed it. He also conjectured that he "may have laid it on the bench or . . . tool box." When asked if it was his intention to turn the card over to the Union when he signed it, his answer was, "I don't recall what it was." He also testified that on the same day that he signed the card he noticed "that it had disappeared. . . ." He thereupon "asked the fellows around" what had happened to it, but no one seemed to know.

On this evidence I find that Wolfram's card was a valid authorization.

J. *"Secondary" Evidence*

As indicated in the statement of the case, *supra*, Respondent refused to comply with the *subpoena duces*

*tecum* to produce certain documents from its records which contained the signatures of purported card-signers. As a result, instead of going through the enforcement procedure in the courts with its time-consuming process, the General Counsel offered certain "secondary" evidence to take the place of the evidence that Respondent refused to produce.[20] This evidence was received by me on the assumption that it was all to be used as a basis for testimony by an expert witness comparing the signatures thereon with the signatures on certain of the authorization cards for his expert opinion as to whether the signatures on the cards were written by the same persons whose signatures appear on the secondary evidence. As will be shown, the General Counsel saw fit to do this with only a few of the cards involving this secondary evidence. Why he did not do this with all of the cards I cannot understand. In any event, before we go into that in more detail, let us examine the secondary evidence in question and how it was obtained.

On September 16, 1965, David C. Coleman (an attorney in Region 13 at the time), in preparation for hearing of this case, wrote to the last known addresses of the card-signers in part as follows:[21]

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[20] See *Bannon Mills, Inc.*, 146 NLRB 611, 633.

[21] On September 21, 1966 (about a month prior to the Board's remand of this case to me), Coleman again wrote to the purported card-signers referring to the hearing that I had previously held in this matter and my ruling that the Union represented a majority of the employees. His letter also stated that he had in his "possession the original cards which were obtained by the Union, one of which bears your signature," and asked the addressees to furnish their current addresses and telephone numbers. For this purpose a form was enclosed which provided a place for their signature. On September 29, Respondent's counsel wrote to the Regional Director asking the reason for these inquiries and protesting the references therein to "signatures" on the cards. On October 13, the Regional Director replied in part that the inquiries were "sent solely for the purpose of keeping a current list of addresses of those employees, and not for the purpose of authenticating signatures appearing on the cards."

I have in my possession the original cards which were obtained by the Union, most of which were presented to my office in May 1964 and June 1965.

One of these cards bears your signature. In order to determine if in fact this card was signed by you, I have made a copy of this card which I am enclosing.

I wish that you would examine this copy of the card and indicate on the back of it whether or not you signed the original of it.[22]

Please then sign this copy and return it to me in the enclosed self-addressed envelope immediately. No stamp is necessary.

At least six individuals replied to this inquiry returning the forms sent out by Coleman, signing them and indicating that they had signed the cards in question. The names appearing on these six documents (which were received in evidence) and the exhibit numbers of the corresponding cards in question were Henry Haire (G.C. A 37), Jerry Hall (G.C. A 38), Alvin Aebly (G.C. A 2), Thomas Staples (G.C. A 100), Arthur Wemmer, (G.C. A 113), and Bernard L. White (G.C. A 115).

In addition to the foregoing, Attorney Coleman identified a statement dated October 13, 1965, that he took from Abner Wise in preparation for the original hearing. In the statement Wise indicated that he had signed an authorization card (G.C. A 11). In his testimony Coleman was unable to say whether or not Wise was sworn when he signed the statement.

Robert L. McCabe, a field examiner for the Board, identified a statement he took on October 26, 1965, from

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[22] The back of the card read as follows:

DID YOU SIGN THE ORIGINAL OF THE CARD REPRODUCED ON THE OTHER SIDE THEREOF?

YES ..... NO .....

Signed .....

Albert Lee Chandler. In his statement Chandler indicated that he too had signed an authorization card (G.C. A 21). Like Coleman, McCabe saw the statement signed, but he was definite in his testimony that he had not put Chandler under oath.

The custodian of personnel records for the shoe department of the Charles Weise Store in Rockford, Mrs. Carroll Rowe, identified from her records an application-for-employment form dated October 25, 1965, signed by a Donald Vanderhaven. On the form was listed a telephone number "962-5287." [23] Mrs. Rowe testified that she did not see the form being filled out and that she did not "know anything at all about the signature on the [form] other than that it appears there." The two above statements and the job application form were all received in evidence.

An affidavit dated April 5, 1967, signed by a Henry M. Haire under the jurat and seal of a Florida notary public was received in evidence citing the fact that the affiant had signed an authorization card on May 27, 1965, while employed by Respondent Company and that at the time the card was signed the affiant was living at 1526 Willard Avenue, Rockford, Illinois. A covering letter of the same date addressed to the General Counsel was also received in evidence as follows:

> Edward Maslanka
> National Labor Relations Board
> U.S. Post Office and Federal Building
> 219 South Dearborn
> Chicago, Illinois 60602
>
> Dear Sir:
>
> Presently I am attending Florida State University working on my Master of Science degree. Since it

[23] This was the telephone number on G.C. A 110, signed by Vanderhaven.

would have been a severe inconvenience to attend the hearing Tuesday, April 11, I am sending this affidavit in hopes that it will supply all the information necessary. If any other information is desired, you can reach me at 599-3392 or 224-9472.

Sincerely,

/s/ Henry M. Haire
HENRY M. HAIRE

Also received in evidence was the envelope in which the two foregoing documents were mailed to the General Counsel showing the sender as Henry M. Haire, Box 6023, Tallahassee, Florida 32306.

An affidavit dated April 5, 1967, signed by a James Richard Beck under the jurat and seal of a Tulsa, Oklahoma, notary public was also received in evidence reciting the fact that the signer had worker for Respondent from March to August 1965, and had signed a union authorization card on or about May 29. A covering letter of the same date addressed to the General Counsel was received in evidence as follows:

April 5, 1967

Christ the Redeamer
Tulsa, Oklahoma

Mr. Edward Maslanka
c/o N.L.R.B.
U.S. Courthouse and Federal Building
219 South Dearborn
Chicago
Illinois, 60602

Dear Sir:

Following the suggestion offered by you on the telephone this morning, I have written and hereby am inclosing the suggested affidavit.

Sincerely yours,

/s/ James Richard Beck
JAMES RICHARD BECK

Also received in evidence was the envelope in which the two foregoing documents were mailed to the General Counsel, showing the sender as James Richard Beck, 4734 South Columbia Place, Tulsa, Oklahoma.

Another affidavit dated April 6, 1966, signed in three places by an Elmer C. Walker under the jurat of a J. R. King, a Board field examiner from St. Louis, Missouri, was received in evidence. This statement also recited that the affiant had been an employee of Respondent Company from 1962 or 1963 until November 1965; that he had signed an authorization card and that at the time he signed the card he was residing at 2313 Rockwell Street, Rockford. In addition to the affidavit the following note signed by an Elmer C. Walker was received:

> I enclose here with a sworn statement which I gave to Mr. J. R. King. I would appreciate receiving a copy of this statement at your convenience.
>
> 4/6/1967
>
> /s/ Elmer C. Walker
> ELMER C. WALKER
> 222 Donald
> Cahokia, Illinois

Also received in evidence was an office memorandum from Jerard P. Fleischut, Acting Director of Region 14 addressed to the General Counsel dated April 7, 1967, as follows:

> Pursuant to your telephone request of April 5, I enclose herewith the original and three copies of the sworn statement of Elmer C. Walker.
>
> Walker was interviewed on the job during working hours and a notary public was not available. However the affidavit and the attachment thereto were handled in such a manner as to provide you with four signatures of Mr. Walker witnessed by our

Board agent. Please note that Walker requests that you send him a copy of his statement.

Notwithstanding the objections of Respondent to all of the foregoing exhibits, I received them in evidence. Clearly, the statements of Wise and Chandler were sufficiently identified for such receipt if not for the purpose of proving the truth of the contents therein at least for the fact that they contained the signatures of Wise and Chandler.[24] The signatures on these two statements were the basis upon which an expert witness testified that they were written by the same persons who signed the cards of Wise (G.C. A 116) and Chandler (G.C. A 21). On the basis of this evidence, I find that these two cards were valid authorizations.

I also find that the employment application of Donald Vanderhaven as well as the replies of Haire, Hall, Aebly, Staples, Wemmer, and White to Attorney Coleman's 1965 inquiry were all receivable as records obtained and kept in the normal course of business and at least are adequate secondary evidence of the signatures of the persons they purport to be. With respect to the card of Donald Vanderhaven (G.C. A 110), the expert testified that the signatures on that card and the application form were written by the same person. On this evidence I find that the Vanderhaven card was a valid authorization.

As indicated previously for some reason (apparently because he felt that the statements on the replies to the 1965 Coleman inquiries were proof in and of themselves of the validity of the cards of Haire, Hall, Aebly, Staples, Wemmer, and White), the General Counsel did not seek the opinion of the expert as to whether or not the cards and the statements were signed by the same persons. While I am aware of the fact that a layman's comparison and opinion in such a matter may not be as reliable as

[24] Whether they were under oath when they signed the statements I believe is immaterial.

an expert's, it is clear that such a comparison and opinion is permissible. See *Heck's Inc.*, 166 NLRB No. 32, footnote 1. Accordingly, having made such a comparison and, being strongly of the opinion that any impartial person would agree with me that the corresponding cards and statements were written by the same persons, I find that the six cards in question were all valid authorizations.

# In the Supreme Court of the United States

OCTOBER TERM, 1971

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No. 71-98

JOHN S. BARNES CORPORATION, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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### OPINIONS BELOW

The order of the court of appeals (Pet. App. 1) enforcing the Board's order is not officially reported. The Board's decision and order (Pet. App. 9–132) are reported at 180 NLRB No. 139.

### JURISDICTION

The judgment of the court of appeals was entered on April 19, 1971 (Pet. App. 2–5). The petition for a writ of certiorari was filed on July 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether, in the circumstances of this case, the Board properly found that the employer's interrogation of his employees concerning union activity was coercive and exceeded the necessities of trial preparation.

## STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at Pet. 2–3.

## STATEMENT

In the spring of 1964, Lodge No. 1553, International Association of Machinists, AFL–CIO, undertook a campaign to organize the employees at the Company's plant in Rockford, Illinois (Pet. App. 21). On May 11, 1964, the Union filed the first of a series of unfair labor practice charges, alleging that the Company had violated Section 8(a) (1), (3) and (5) of the Act (Pet. App. 20). On September 7, 1965, the General Counsel of the Board issued a complaint based on these charges; a hearing was scheduled for November 3, 1965 (Pet. App. 35).

On November 2, 1965, employee Sam La Sala, who had been subpoenaed by the General Counsel to testify at the hearing, was called to Plant Superintendent Stenberg's office at about 4:00 p.m. (Pet. App. 36; A. 191).[1] Stenberg introduced La Sala to attorneys Fahy and Holmstrom, indicating that they "would like to ask [La Sala] a few questions" (Pet. App. 36; A.

[1] "A." refers to the separate printed Appendix filed by the parties in the court of appeals.

6, 191–192). Fahy said that he "would like to find out what was going on or what was wrong at the shop," but that La Sala did not have to answer if he did not wish to (Pet. App. 36; A. 192). Fahy explained that he had a list of people who had been subpoenaed, that he was picking names "at random," and that La Sala's name "happened to come up." Fahy then asked La Sala if he had signed a union card like the one lying on a nearby desk; La Sala answered "Yes." Fahy also asked if La Sala had ever been threatened about joining the Union or promised more money if he would not join; La Sala responded in the negative. Finally, Fahy asked if La Sala thought the Union meeting place was under surveillance by any one in the shop; La Sala answered "Yes," and identified Stenberg as the official involved (Pet. App. 36; A. 192). Holmstrom then told La Sala that he had noticed his name in connection with an alleged violation concerning a change in his working hours. He repeatedly asked if La Sala had been given any reason for the change of hours; La Sala answered in the negative (Pet. App. 86; A. 192–193).

At about the same time, employee Thomas Kruse was called to Stenberg's office and asked by Fahy and Holmstrom whether he was "participating in any activity" at the Imperial Motel (Pet. App. 36; A. 247–248). Kruse told Fahy, Holmstrom, and Stenberg the questions he had been asked by the Board agent at a meeting at the motel (Pet. App. 36; A. 248–249, 250). Employee Madeline Stone was also called in, shown a duplicate of the union card she had signed, and asked why she had signed the card (Pet.

App. 36; A. 257–258). Stone was further asked who had given her the card, and whether she had ever attended a union meeting (Pet. App. 36; A. 258–259). Similarly, employee Betty Hollon was called to Stenberg's office and asked by Fahy and Holmstrom whether she had signed a union card (Pet. App. 36; A. 263). Hollon answered "Yes," and, in response to the further question why she had signed, Hollon added that "everybody else has." Fahy and Holmstrom then asked Hollon if she had been threatened by the Union or the Company about signing a card, how she thought the Union would help her, and whether she "felt the men were insecure in their jobs" (Pet. App. 36; A. 263–264).

On the basis of the foregoing facts, the Board found (Pet. App. 14, 36–37) that the interrogation by the Company's counsel, in the presence of Plant Manager Stenberg, who had previously engaged in other unlawful conduct ((see n. 2, *infra*), went beyond the questions necessary for preparation of the Company's case before the Board. Such interrogation, it concluded, was coercive and violated Section 8(a)(1) of the Act.[2] The Board ordered the Company, *inter*

[2] In addition, the Board found that the Company violated Section 8(a)(1) of the Act by its interrogation of other employees, by giving employees the impression that their union activities were under surveillance, by threatening employees, and by inducing employees to revoke their union authorization cards. Much of this conduct was attributed to Plant Manager Stenberg (Pet. App. 11–14, 25–44.) The Board further found that the Company violated Section 8(a)(3) of the Act by discharging employees Brown and Roskopp and by increasing the working hours of employees La Sala and Edwards (Pet. App. 14–15, 44–67).

*alia,* to cease and desist from engaging in such conduct (Pet. App. 2–5). The court of appeals enforced the Board's order (Pet. App. 1).

## ARGUMENT

The basic question presented in the petition is whether the Board properly concluded that the interrogation of employees by Company counsel violated Section 8(a)(1) of the Act in that it was coercive and went beyond what was necessary to prepare the Company's defense to the unfair labor practice complaint.[3] An issue of this kind turns on the facts of the particular case and does not warrant further review by this Court. In any event, since, as shown above, the interrogation here sought to ascertain the identity of employee-solicitors for the Union and to determine whether the employees had given statements to Board agents, and since it was conducted in the presence of a high management official who had engaged in extensive unlawful acts, the Board

[3] In *Johnnie's Poultry Co.*, 146 NLRB 770, 775, the Board stated the general principles applicable to interrogation as follows:

> * * * the employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfere with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege. [Footnote omitted.]

could properly find that the questioning was impermissible under Section 8(a)(1) of the Act.

Nor is the principle applied in this case in conflict with that applied in *National Labor Relations Board* v. *Ambox, Incorporated*, 357 F. 2d 138, 141 (C.A. 5). Even if *Ambox* suggests a less stringent test than used here—*i.e.*, the manner of interrogation is irrelevant so long as the questions do not go beyond the scope of the complaint—that test was not satisfied in the instant case. As the Board found, and the court below agreed, the questions here did go beyond the matters raised in the complaint.

## CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

EUGENE G. GOSLEE,
*Acting General Counsel,*
DOMINICK L. MANOLI,
*Associate General Counsel,*
NORTON J. COME,
*Assistant General Counsel,*
ELLIOTT MOORE,
*Attorney,*
*National Labor Relations Board.*

AUGUST 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971